

1 Laurence D. King (SBN 206423)
 2 Mario M. Choi (SBN 243409)
KAPLAN FOX & KILSHEIMER LLP
 3 350 Sansome Street, Suite 400
 4 San Francisco, CA 94104
 Telephone: 415-772-4700
 5 Facsimile: 415-772-4707
 6 Email: lking@kaplanfox.com
 7 Email: mchoi@kaplanfox.com

8 *Attorneys for Plaintiffs*

9 [Additional Counsel Appear on Signature Page]

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

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

**(REDACTED VERSION)
 HIGHLY
 CONFIDENTIAL
 INFORMATION
 SUBJECT TO
 PROTECTIVE ORDER
 OF THE COURT**

**DEMAND FOR JURY
 TRIAL**

THIRD CONSOLIDATED AMENDED
 COMPLAINT

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

1 MARKETS, INC.; URM STORES INC.;
2 WESTERN FAMILY FOODS, INC.; and
3 WOODMAN'S FOOD MARKET, INC.,

4 Plaintiffs,

5 vs.

6 TRI-UNION SEAFOODS, LLC, d/b/a
7 CHICKEN OF THE SEA INTERNATIONAL;
8 THAI UNION GROUP PUBLIC COMPANY,
9 LTD.; BUMBLE BEE FOODS, LLC, f/k/a
10 BUMBLE BEE SEAFOODS, LLC; STARKIST
11 CO., DEL MONTE CORPORATION;
12 DONGWON INDUSTRIES CO., LTD.; LION
13 CAPITAL LLP; LION CAPITAL
14 (AMERICAS), INC.; and BIG CATCH
15 CAYMAN LP a/k/a LION/BIG CATCH
16 CAYMAN LP,

17 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., URM
 9 Stores Inc., Western Family Foods, Inc. and Woodman's Food Market, Inc.;
 10 (collectively, "Plaintiffs"), by and through undersigned counsel, complain as
 11 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 Third 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).

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 URM Stores, Inc. is a Washington corporation with its
20 principal place of business in Spokane, Washington. During the Relevant Period,
21 URM Stores, 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 Western Family Foods, Inc. is an Oregon corporation with its
25 principal place of business in Tigard, Oregon. During the Relevant Period, Western
26 Family Foods, 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.

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

IV. DEFENDANTS

A. Bumble Bee

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

B. Thai Union and Tri-Union

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

43. Defendant Thai Union Group Public Company, Ltd. ("Thai Union"), a publicly held company headquartered in Thailand, is a global processor and exporter of frozen seafood and Packaged Tuna.

44. Since 2000, Tri-Union has been a wholly-owned subsidiary of Thai Union North America, Inc. ("TUNAI"), a California corporation with its principal place of business at 9330 Scranton Road, Suite 500, San Diego, California 92121. TUNAI, in turn, is a wholly-owned subsidiary of Thai Union. All three vertically-integrated companies have been led by Thiraphong Chansiri, who serves as the CEO and President of Thai Union, the President of TUNAI, and a Director of Tri-Union, at which Chansiri has a day-to-day leadership role.

1 45. Throughout the Relevant Period, Thai Union controlled and
2 supervised the business, operations, and activities of Tri-Union, including the
3 conduct alleged in this Complaint. Thai Union has been described in the media as
4 “the world’s biggest producer of canned tuna,” and is reported to export
5 approximately 55% of its tuna to the United States.

6 46. [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 47. Since the acquisition, Thai Union has fully integrated Tri-Union into
20 its global Packaged Tuna business. In 2007, Tri-Union’s President, John Signorino,
21 was replaced by Thai Union’s former Executive Director and Chief Financial
22 Officer, Shue Wing Chan, who is both a member of the Chansiri family and Thai
23 Union’s self-styled “Global Leadership Team.” Prior to joining Tri-Union, he
24 served as the CFO of Thai Union.¹ [REDACTED]
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27 ¹ [REDACTED]
28 [REDACTED]

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51. [REDACTED]

52. [REDACTED]

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

54. [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 55. Thus, Tri-Union has been and is the *alter ego* and agent of Thai
7 Union. Moreover, Thai Union directly participated in the conspiracy described
8 herein through personnel who had duties at Thai Union, such as Chan.

9 56. [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 57. [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 58. Thai Union and Tri-Union pitched themselves to Chicken of the Sea
22 customers as one company, *i.e.*, Thai Union, the world's largest canned seafood
23 company. Given the breadth and scope of the conspiracy, and the benefits received
24 by Thai Union as a direct result of the collusion alleged herein, it would be
25 inequitable to allow Thai Union to escape responsibility for the actions of the
26 combined enterprise.

27 59. As used herein, "Chicken of the Sea" collectively refers to Defendants
28 Tri-Union and Thai Union.

C. Dongwon, Del Monte, And StarKist

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

61. Defendant Del Monte Corporation (“Del Monte”), now known as Big Heart Pet Brands, Inc., is a Delaware corporation with its principal place of business at 1 Strawberry Lane, Orrville, Ohio, 44667. Del Monte acquired StarKist in 2002. Through StarKist, Del Monte produced and sold Packaged Tuna throughout the United States (including in this District), its territories and the District of Columbia. Del Monte sold StarKist to Dongwon on October 6, 2008. According to a filing by Del Monte with the Securities & Exchange Commission, “[a]t the time of sale, Del Monte entered into a two-year Operating Services Agreement (which was completed in September 2010) pursuant to which [Del Monte] provided operational services to Starkist Co. such as warehousing, distribution, transportation, sales, information technology and administration.”

62. Del Monte managed the operations of StarKist Co. during the time it owned StarKist, from December 2002 until October 2008, and thereafter continued to manage StarKist under an operating agreement with Dongwon Industries until

1 October 2010, at which time Dongwon Industries became the operator of StarKist.
 2 Key StarKist executives also served as Del Monte executives during the time Del
 3 Monte owned and operated StarKist. For example, Don Binotto served as
 4 StarKist's CEO from the 1990s through December 2005 when StarKist was owned
 5 first by Heinz, then by Del Monte, and then was rehired by Dongwon Industries.
 6 Joseph Tuza was a Del Monte marketing executive between May 2006 and August
 7 2008, and then was a StarKist Sr. VP of Marketing.

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

16 64. Chaebols are closely-knit business groups in South Korea under the
 17 control of an extended family, with key flagship firms which are used as the
 18 instruments of control of other firms within the group. They have four key
 19 features: (1) the governance structure of the group involves family or extended
 20 family control; (2) the formal organizational structure of the group involves a
 21 group headquarters, located in an actual or *de facto* holding company, sometimes
 22 known as a "flagship" company, which controls a network of subsidiaries, which
 23 fall under the control of the family, the group as a whole, and of flagship firms
 24 within the group; (3) the business structure of the firm encompasses a number of
 25 discrete products and services, some of which are wholly unrelated and others that
 26 are effectively vertically integrated; and (4) these groups are characterized by
 27 strong internal cultures of hierarchy, familism, and loyalty, with family members
 28

1 of the founder or his cohorts also occupying key managerial positions within the
2 group.

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

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED] In other words, as a chaebol, Dongwon
20 does not follow the principles of corporate separateness that are expected of
21 companies incorporated in the United States. Instead, the Dongwon entities,
22 including Dongwon Industries and StarKist, operated as a single entity.

23 66. Dongwon Group controls approximately 75% of the Korean canned
24 tuna market. At the time of the StarKist acquisition, it was reported that “the
25 transaction will help the Dongwon Group, whose affiliates include the world’s
26 biggest tuna fishing company, Dongwon Industries, and processed food maker
27 Dongwon F&B, to create the world’s biggest canned tuna business. ‘We believe
28 that the acquisition of StarKist seafood will help Dongwon establish a strong

1 foothold and penetration in the U.S. market,’ said Park In-gu, vice chairman of
2 Dongwon Enterprise, which is the holding company for the conglomerate.” Park
3 also stated that the deal was “a great opportunity for us to initiate operations in the
4 United States.”

5 67. Dongwon Group’s website describes its mission to become the
6 “world’s biggest tuna company,” through StarKist, which it describes as follows:

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

21 68. Dongwon Group purchased StarKist with the goal of globalizing and
22 integrating StarKist with its existing seafood businesses. According to former
23 StarKist CEO, In-soo Cho, “StarKist used to own boats and catch its own tuna and
24 process it and sell it” until the “business was sold and became part of larger parts
25 of businesses.” StarKist’s purchase by Dongwon Group, which owns one of the
26 largest fishing fleets in the world, was done with the goal of returning StarKist to
27 an integrated business model, “from the sea to the shelves.” To do so, executives
28 from other Dongwon Group companies were brought to StarKist to oversee the
company; the media reported a contemporaneous “string of exits” by StarKist’s
U.S. executives.

1 69. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]²

8 70. [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 71. In 2012, Dongwon Industries dismissed several StarKist executives
20 and replaced them with executives from the Dongwon entities—a move intended
21 to “better align and leverage Dongwon’s expertise and streamline the
22 organization.” Among the Dongwon executives brought on to closely manage and
23

24 ² [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28 [REDACTED]

1 control StarKist was Nam-jung Kim, who currently owns 68% of Dongwon
 2 Enterprise. Nam-jung Kim (the son of Dongwon Chair J.C. Kim) was appointed to
 3 the newly created position of chief operating officer to lead the “continued growth
 4 and expansion of Dongwon-StarKist global business.” His biography, according to
 5 Bloomberg, demonstrates the seamless integration between the Dongwon affiliates,
 6 including StarKist:

7
 8 Nam-jung Kim served as Vice President of Dongwon
 9 F&B Co., Ltd. Mr. Kim served as the Chief Operating
 10 Officer of StarKist Co. since 2012 until October 2014.
 11 Mr. Kim's lasting relationship with the tuna industry took
 12 off in 1996 at the Dongwon F&B tuna plant in
 13 Changwon. He served as the Chief of Management
 14 Supporting Division at Dongwon Industry Co., Ltd. He
 15 served as a Director of Construction Division at Dongwon
 16 Systems Corporation and Vice President of Dongwon
 17 Enterprise Co., Ltd. He became Product Manager of the
 18 sea laver category in 1999. Mr. Kim returned to
 19 Dongwon F&B in 2004 to work as Marketing Strategy
 20 Manager until 2006. He continued to diversify his
 21 business acumen by leading the Finance & Planning
 22 Department of Dongwon Industries Co. Since 2008, he
 served as the Head of the Finance and Planning
 Department at Dongwon Systems and served as its Vice
 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.

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

25 72. Nam-jung Kim was to lead the growth of the combined Dongwon-
 26 StarKist global business. At the same time, Dongwon Industries stated its
 27 commitment to supply StarKist directly with a steady stream of tuna, and
 28

1 purchased a dedicated vessel to operate for StarKist in American Samoa. Dongwon
2 added Jae Hoon Choi to the StarKist procurement team to lead the effort.

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

14 74. Dongwon micromanaged StarKist's affairs and disregarded principles
15 of corporate separateness with respect to StarKist. [REDACTED]

16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
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78. Dongwon, including J.C. Kim and other senior Dongwon executives, not only established policy and direction for StarKist, but was the decision-maker

1 concerning even routine matters at StarKist, and effectively took over the
2 performance of StarKist's day-to-day operations in carrying out that policy and
3 direction. Further, because of the disregard of corporate separateness and the lack
4 of any meaningful distinction between the two companies, StarKist employees that
5 performed acts in furtherance of the conspiracy did so on behalf of both Dongwon
6 and StarKist (and Dongwon employees similarly acted on behalf of both StarKist
7 and Dongwon).

8 79. [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 80. StarKist Co. is the agent, instrumentality and *alter ego* of Dongwon,
14 which directly participated in, and profited from, the conspiracy described herein.

15 81. [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

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

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

15 84. As used herein, “StarKist” collectively refers to Defendants StarKist,
 16 Del Monte (December 2002 until October 2010), and Dongwon (from October
 17 2008 through the present).

18 **V. AGENTS**

19 85. Defendants’ alleged wrongful acts were authorized, ordered, or
 20 performed by their directors, officers, managers, agents, employees, or
 21 representatives while actively engaged in the management of Defendants’ affairs.

22 **VI. INTERSTATE TRADE AND COMMERCE**

23 86. Defendants and their co-conspirators, directly and through their
 24 affiliates, sold Packaged Tuna throughout the United States, including this district,
 25 at artificially inflated prices during the Relevant Period. Defendants are direct
 26 competitors in the United States Packaged Tuna market.

27 87. Throughout the Relevant Period, there was a continuous and
 28 uninterrupted flow of invoices for payment, payments, and other documents

essential to the sale of Packaged Tuna in interstate commerce between and among offices of Defendants and their customers located throughout the United States, its territories and the District of Columbia.

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

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

VII. FACTUAL ALLEGATIONS

A. Background

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

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

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

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

1 94. StarKist, Bumble Bee, and Chicken of the Sea sell Packaged Tuna in
2 the United States. The United States Packaged Tuna industry generates annual
3 sales of approximately \$1.7 billion.

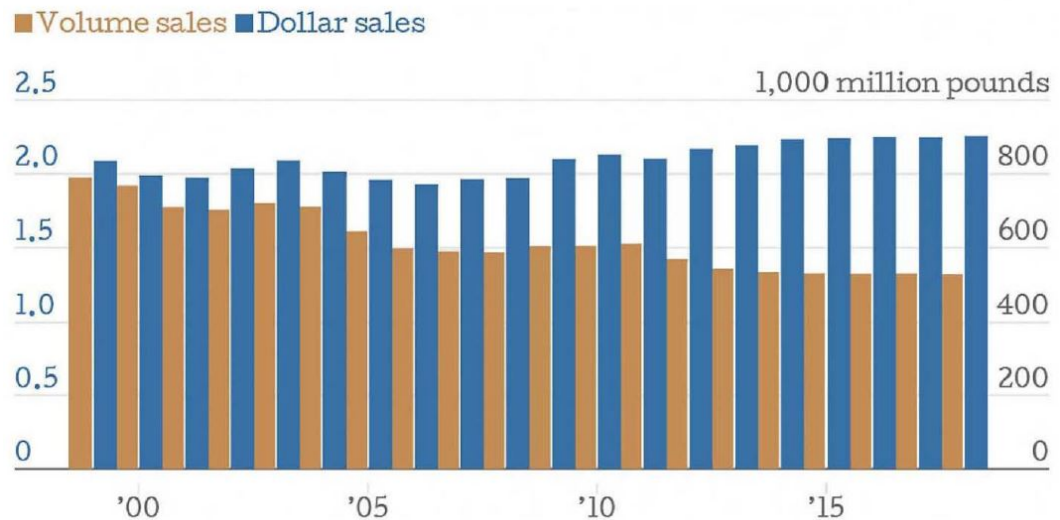
4 95. Defendants dominated the United States market for Packaged Tuna
5 throughout the Relevant Period, with a combined market share of 80-85%. Each
6 Defendant's share of the market is almost identical to what it was at the beginning
7 of the Relevant Period: StarKist (40-44%); Bumble Bee (24-25%);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

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

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

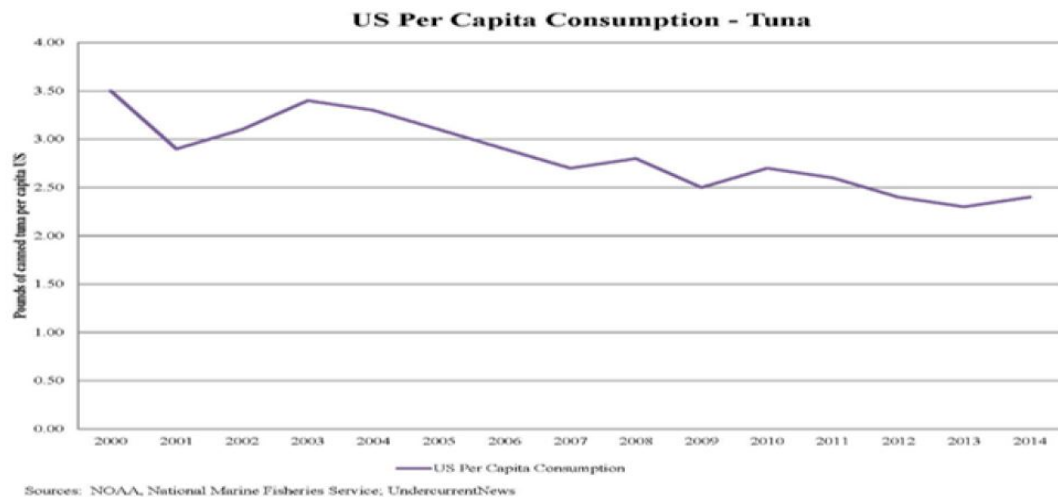
17 98. As a result, domestic consumption of Packaged Tuna has steadily
18 declined since 2004. Yet, as shown in Figure 1 below, which contains data through
19 2014 and projections thereafter, the prices, as represented by the spread between
20 dollar sales and volume sales of Packaged Tuna, increased steadily from 2004 to
21 2014.

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25 **Figure 1**
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27
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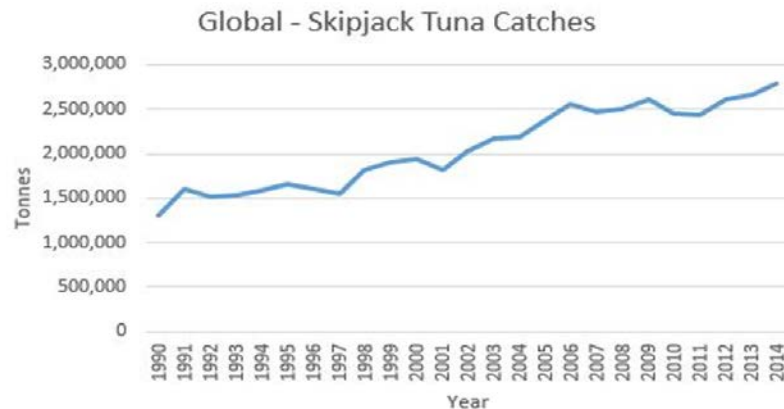


99. In particular, Packaged Tuna saw a steady decline in U.S. per capita consumption between 2004 and 2014 (*see* Figure 2 below).

Figure 2



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

Figure 3

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

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

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

B. The DOJ's Criminal Investigation

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

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

14 105. On December 3, 2015, the termination of the planned merger of
15 Chicken of the Sea and Bumble Bee was announced. According to a DOJ press
16 release:

17
18 “Consumers are better off without this deal,” said
19 Assistant Attorney General Bill Baer [(“Baer”)] of the
20 department’s Antitrust Division. “Our investigation
21 convinced us – and the parties knew or should have
22 known from the get go – that the market is not
functioning competitively today, and further
consolidation would only make things worse.”

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

25 **C. Pattern of Collusion**

26 107. During the Relevant Period, the Packaged Tuna industry was rife with
27 collusion, often stemming from the close interpersonal relationships that had
28

1 developed over many years. Defendants Chicken of the Sea, Bumble Bee, and
2 StarKist participated together in anticompetitive communications, including
3 telephone calls (sometimes multiple times a day), text messages, emails (often
4 using private email accounts to avoid detection), and frequent face-to-face
5 meetings at pre-arranged locations, such as hotels and restaurants. In these
6 meetings, emails, text messages and telephone calls, Defendants shared sensitive
7 business and bid information, and entered into agreements to fix, raise, stabilize,
8 and maintain prices of Packaged Tuna sold in the United States. Among other
9 things, they agreed not to charge below a certain price, and to coordinate price
10 increases.

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

24 109. Frequent international trade meetings provided opportunities for
25 fostering warm relationships with competitors and ultimately facilitated high-level
26 collusion. [REDACTED]

27 [REDACTED]

28 [REDACTED]

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

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

23 112. There also were numerous interlocking relationships between Chicken
24 of the Sea, Bumble Bee, and StarKist, which fostered frequent high-level
25 discussions among the leadership of these companies. For example, between the
26 late 1990s and 2009, StarKist and Chicken of the Sea had a co-packing agreement
27 concerning their facilities in American Samoa.
28

1 113. During the Relevant Period, Bumble Bee and Chicken of the Sea also
 2 co-operated on seafood processing and packaging. Bumble Bee co-packed for
 3 Chicken of the Sea on the west coast at Bumble Bee's Santa Fe Springs, California
 4 plant, while Chicken of the Sea co-packed for Bumble Bee on the east coast at its
 5 Lyons, Georgia plant.

6 114. During the Relevant Period, it was commonplace for former
 7 executives of one Defendant to later become executives at their former
 8 competitors. Within the past 20 years, numerous individuals have held executive or
 9 senior sales/marketing positions for more than one Defendant (while maintaining
 10 close interlocking relations with former colleagues), including, but not limited to:
 11 Chris Lischewski (VP of Procurement at StarKist from 1991 to 1998, and then
 12 President and CEO of Bumble Bee, from 1999 to present); Jan Tharp (Sr. VP of
 13 Supply Chain at StarKist, from December 2008 to July 2010, Sr. VP, Operations at
 14 Bumble Bee, from July 2010 to September 2012, and then Executive VP/COO at
 15 Bumble Bee, from September 2012 to present); J. Douglas Hines (Sr. VP, Sales &
 16 Marketing at Chicken of the Sea in the 1990s, joining Bumble Bee in 1997, where
 17 he served as Bumble Bee's Executive VP and COO from September 2008 to
 18 September 2012); Joseph Clancy (VP Sales/Marketing at StarKist, from 1985 to
 19 2002, and then VP Retail Sales at Chicken of the Sea, from November 2002 to
 20 December 2010); Kevin McClain (VP of Supply Chain at Chicken of the Sea, from
 21 1979 to 2009, and then VP Resourcing at Bumble Bee, from 2009 to present);
 22 David Burt (General Manager – Marketing at StarKist from 2000 to 2004, and then
 23 VP Sales Specialty Markets at Bumble Bee, from March 2004 to present); Hubert
 24 Tucker (Sales Manager at Chicken of the Sea, from December 1997 to July 2012
 25 and then Starkist's Director of Sales Eastern Zone, from July 2012 to present);
 26 Donald Stanton (General Manager Inventory Control at StarKist, from 1985 to
 27 2001 and then VP Supply Chain at Bumble Bee, from October 2005 to January
 28 2009); and Dennis Hixson (VP Sales Specialty Markets at Chicken of the Sea,

1 from 2005 to 2013, and then Sr. Retail Operations Manager at StarKist, from 2014
2 to present).

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

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

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

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

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

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

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

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

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

25 123. During the Relevant Period, Mike White, Chicken of the Sea's
 26 Director of Marketing since the late 1980s, regularly contacted his counterparts at
 27 StarKist (including Joseph Tuza, a Del Monte executive and StarKist Sr. VP of
 28

Marketing, from August 2008 until November 2011), and Bumble Bee to confirm price quotations that customers claimed to have received from his competitors.

D. Defendants' Overarching and Continuous Collusive Scheme

124. Defendants' overarching and continuous scheme to fix prices for Packaged Tuna began at least as early as 2004, as demonstrated by the following specific examples:

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

125. [REDACTED]

126. [REDACTED]

127. [REDACTED]

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130. As a result of the discussions among the Chicken of the Sea, Bumble Bee and Del Monte/StarKist executives and employees between March and May 2004, a conscious commitment to an unlawful common scheme, *i.e.*, an agreement,

1 developed among Defendants and co-conspirators to increase prices of canned tuna
2 sold to Plaintiffs and others in the U.S. by, among other conduct, coordinating
3 price increase announcements or pricing terms, secretly and collusively
4 exchanging pricing information and prospective pricing announcements and
5 business plans, and collectively reducing quantity and restraining output.

6 131. [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 132. [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
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23 [REDACTED]
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25 133. [REDACTED]
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134. [REDACTED]

135. Pursuant to their agreement, all three brands, Chicken of the Sea, Bumble Bee, and StarKist, increased their net prices on light and white meat

³ Del Monte's 2005 fiscal year began in June 2004.

1 Packaged Tuna in June and July of 2004. This was followed by a list price increase
2 by each Defendant that was announced in late August and early September of
3 2004. By September 2, 2004, Bumble Bee, StarKist, and Chicken of the Sea had all
4 collusively raised list prices on light meat Packaged Tuna by an additional \$2.00
5 per case in accordance with their unlawful agreement to increase Packaged Tuna
6 prices to Plaintiffs and others in the United States.

7 136. [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 137. [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 138. [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]

27 139. [REDACTED]
28 [REDACTED]

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144. [REDACTED]

145. [REDACTED]

146. [REDACTED]

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150. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2. Collusion on Package Size Changes in 2007-08

151. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

152. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

153. [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

154. [REDACTED]

[REDACTED]

155. [REDACTED]

[REDACTED]

156. [REDACTED]

[REDACTED]

⁶ [REDACTED]

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[REDACTED]
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157. [REDACTED]
[REDACTED]
[REDACTED]
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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
158. [REDACTED]
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159. [REDACTED]
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[REDACTED]

168. [REDACTED]

[REDACTED]

169. [REDACTED]

[REDACTED]

170. [REDACTED]

[REDACTED]

1 171. [REDACTED]

6 172. [REDACTED]

10 173. [REDACTED]

16 174. [REDACTED]

19 175. As reflected above, Thai Union authorized Chicken of the Sea to go
20 forward with the collusive downsizing scheme.

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

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

25 177. [REDACTED]

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

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4. Collusion on 2010 Net Price Increases

186. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

187. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

188. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

189. [REDACTED]

[REDACTED]

[REDACTED]

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194. [REDACTED]

[REDACTED]

[REDACTED]

195. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

196. [REDACTED]

[REDACTED]

[REDACTED]

197. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

198. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

handling.”

1 199. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 200. [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 201. [REDACTED]

9 [REDACTED]

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

14 **5. Collusion on 2011 Price Increases**

15 203. [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 204. [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28 [REDACTED]

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[REDACTED]

205. [REDACTED]

[REDACTED]

206. [REDACTED]

[REDACTED]

207. [REDACTED]

[REDACTED]

208. [REDACTED]

[REDACTED]

209. [REDACTED]

[REDACTED]

210. [REDACTED]

[REDACTED]

1 211. [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 212. [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 213. [REDACTED]
14 [REDACTED]
15 214. On or around March 10, 2011, Bumble Bee announced to its brokers
16 “broad scale list price increases” across many of its Packaged Tuna products,
17 effective May 29, 2011, citing cost increases “with no signs of relief in the near
18 future.”
19 215. [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
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1 216. [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 217. [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 218. [REDACTED]
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12 [REDACTED]
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14 [REDACTED]
15 [REDACTED]
16 219. [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 220. [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

26 221. As set out above, by exchanging pricing information among high-
27 level executives, the erstwhile competitors were able to police whether each was
28 adhering to their agreement.

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222. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6. Collusion on List Price Increases In 2011-12

223. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

224. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

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

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3 236. [REDACTED] [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]

7 **8. Collusion on Promotional Activity**

8 237. [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 **VIII. THE UNITED STATES PACKAGED SEAFOOD MARKET IS**
21 **CONDUCTIVE TO COLLUSION**

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

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

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

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

14 242. Defendants possessed significant market power to raise prices for
15 Packaged Tuna above competitive levels in the United States with a combined
16 market share of 80-85% during 2004-2015. Upon information and belief, they
17 conspired to ensure the stabilization and maintenance of their respective market
18 shares in the Packaged Tuna market despite declining demand.

19 243. There are no economically reasonable substitutes for Packaged Tuna.
20 Alternative forms of seafood, such as frozen seafood or fresh seafood, require
21 refrigeration and preparation, such as cooking, before they can be consumed, and
22 lack the convenience, consistent portion size, and ease of use of Packaged Tuna.

IX. PLAINTIFFS SUFFERED ANTITRUST INJURY

244. During the Relevant Period, Defendants' conspiracy had the following effects, among others:

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

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

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

X. TOLLING OF THE STATUTE OF LIMITATIONS

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

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

248. Defendants engaged in a secret conspiracy and did not reveal facts that would put Plaintiffs on inquiry notice that there was an agreement to fix prices for Packaged Tuna. Defendants' collusive communications were conducted through private meetings, telephone calls, text messages, and emails between and 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.

7 249. [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]

11 250. 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.

16 251. 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.

19 252. 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.

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

24 254. 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

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

255. [REDACTED]

256. [REDACTED]

257. [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 258. 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.”

8 259. [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 260. 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, Unified Grocers, Inc. circulated an
21 internal memo advising of the joint increase, attributing its cause to the explanation
22 provided by the suppliers: “dwindling Fish supplies and additional cost pressures.”.

23 261. [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
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[REDACTED]

266. [REDACTED]

[REDACTED]

267. [REDACTED]

[REDACTED]

1 268. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

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

13 [l]ight meat tuna raw material prices have gone up over
 14 \$1,000 MT over the last two years. Prices are not
 15 expected to retreat due to the strong worldwide demand
 16 and a weak Dollar. Combine this fact with increases in
 17 production and supply chain costs Chicken of the Sea is
 18 announcing a list price increase on all chunk light tuna
 items. . . .

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

22 270. Similarly, a published article at the time of the announcement of the
 23 can resizing stated that “a customer service representative for StarKist that
 24 explained that tuna prices have reached an all-time high, and coupled with the
 25 increased costs of transportation and other ingredients, they had to make a
 26 change.” And another article said “in August of 2008 when the move had been
 27 implemented, StarKist stated that it did this primarily for environmental reasons,
 28 including the purpose of “sav[ing] two million gallons of water a year, while only

1 taking out two teaspoons of tuna from each can.” The existence of a price-fixing
2 conspiracy as a reason for the price increase was not disclosed.

3 271. On August 27, 2008, Del Monte issued a price announcement to all of
4 its “Valued Customers,” advising of a StarKist price increase, effective November
5 3, 2008, due to “continued escalation of global Tuna fish prices,” and stating that
6 “[o]ver the next several days our sales agency and/or local sales management will
7 be in contact with you to provide additional details and review plans that will
8 continue the growth of our mutual business.” In accordance with its announcement,
9 Del Monte’s agents and representatives contacted its customers over the next
10 several months to provide detailed, but misleading, explanations for both recent
11 and forthcoming StarKist price increases.

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

21 273. [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 274. The 2008 collusive price increase agreement was particularly difficult
25 to detect because it was formed through meetings in Bangkok and phone calls
26 between a close-knit group of high-level executives at the competing firms. The
27 close ties and trust among executives, many of whom had previously worked
28

1 together before moving to competing firms, made discovery of the conspiracy by
2 their customers impossible.

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

6 276. [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 277. [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 278. In its March 2011 announcement of a price increase effective in May
19 2011, StarKist cited increases in "Crude index," "Packaging costs," and "Fish
20 costs." In its January 2012 announcement of a price increase effective March 2012,
21 StarKist cited increases in the costs of crude oil, metal, and transportation, as well
22 as "Record high fish costs." Chicken of the Sea, in its January 2012 announcement
23 of a price increase effective March 2012, placed the blame on "High fish prices"
24 and "higher raw material costs." Again in its March 30, 2012 announcement to
25 "Our Valued Customers" of another price increase effective July 2012, Bumble
26 Bee cited "global inflation, transportation cost increases stemming from global
27 demand on fossil fuel, and resource materials (most notably on fish)." And
28 StarKist, in its April 2012 announcement to "Our Valued Customers" of a price

1 increase, effective in July 2012, cited “numerous costs increases” and escalating
2 “fish costs” as the reasons for the price increase. These statements were
3 misleading because they failed to disclose the true reason for the increase was
4 Defendants’ illegal agreement.

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

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

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

23 282. Plaintiffs could not have discovered the alleged conspiracy at an
24 earlier date by the exercise of reasonable diligence because of the deceptive
25 practices and secrecy techniques employed by Defendants and their co-
26 conspirators so as to avoid detection of, and fraudulently conceal, their contract,
27 combination, or conspiracy. Defendants’ conspiracy was fraudulently concealed by
28 various means and methods, including, but not limited to, secret meetings,

1 misrepresentations to customers, utilization of personal email accounts, and
2 surreptitious communications among themselves and their co-conspirators via
3 telephone and in-person meetings so as to prevent the existence of written records.

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

8 284. None of the facts or information available to Plaintiffs prior to July
9 23, 2015, if investigated with reasonable diligence, could or would have led to the
10 discovery of the conspiracy prior to July 23, 2015.

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

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

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

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

288. 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]

XII. ADDITIONAL ALLEGATIONS AGAINST DEFENDANTS LION CAPITAL AND BIG CATCH

A. Additional Guilty Pleas

289. Bumble Bee recently pled guilty to its role in a conspiracy to fix prices of packaged-seafood products in the United States. The Department of Justice issued a press release on May 8, 2017 detailing the nature of the plea: "In addition to agreeing to plead guilty, Bumble Bee has agreed to pay a \$25 million criminal fine, which will increase to a maximum criminal fine of \$81.5 million, payable by a related entity [Big Catch Cayman LP], in the event of a sale of

1 Bumble Bee subject to certain terms and conditions. Bumble Bee has also agreed
2 to cooperate with the Antitrust Division's ongoing investigation."⁷

3 290. Steve Hodge recently pled guilty to his role in the price-fixing
4 conspiracy during his tenure at StarKist. Hodge admitted to (and has been
5 convicted of) price-fixing canned tuna (and other packaged seafood products) in
6 violation of the Sherman Act for the period between at least 2011 until 2013.

7 **B. Lion Capital**

8 291. Defendant Lion Capital LLP ("Lion Capital") is a British private
9 equity firm specializing in investments in the consumer sector. Lyndon Lea co-
10 founded the company in 2004. Lion Capital purchased Bumble Bee in 2010 for
11 approximately \$980 Million from Centre Partners Management LLC ("Centre"), a
12 United States-based private equity firm. According to its website, Lion Capital
13 maintained offices in New York and Los Angeles during a time period covered by
14 the alleged conspiracy. Lion Capital's Los Angeles office was responsible for
15 overseeing the Bumble Bee investment. The Lion Capital executives in this office
16 included Eric Lindberg, Jeff Chang, and Jacob Capps.

17 292. Defendant Lion Capital (Americas), Inc. ("Lion Americas") is another
18 parent company of Bumble Bee identified as such in Bumble Bee's plea
19 agreement. It is the subsidiary through which Lion Capital operates in the United
20 States. There is no meaningful distinction between Lion Capital and Lion
21 Americas. Lion Americas is headquartered in the same Los Angeles office as Lion
22 Capital. In terms of personnel, Lion Americas has significant overlap with Lion
23 Capital. For example, Lindberg was both a director of Lion Americas and a
24 partner at Lion Capital, while Capps was President of Lion Americas and a partner
25 at Lion Capital. Additionally, Lion Americas and Lion Capital use the same
26
27

28 7 <https://www.justice.gov/opa/pr/bumble-bee-agrees-plead-guilty-price-fixing>.

1 website without distinguishing between the two entities.⁸ [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]

5 293. Defendant Big Catch Cayman LP a/k/a Lion/Big Catch Cayman LP
6 (“Big Catch”) is a holding company that wholly owns Bumble Bee. Big Catch was
7 established in November 2010, and its principal place of business is c/o Lion
8 Capital (Americas) Inc., 888 7th Avenue, 43rd Floor, New York, N.Y. 10019. Big
9 Catch is the entity referenced in Bumble Bee’s criminal plea agreement as the
10 entity that would receive the proceeds from the sale of Bumble Bee. As part of
11 that plea agreement, Big Catch must pay up to \$56.5 million in criminal fines in
12 the event that Bumble Bee is sold. Upon information and belief, Big Catch is a
13 shell company and does not engage in any operations separate from those of Lion
14 Capital and Bumble Bee. [REDACTED]
15 [REDACTED]
16 [REDACTED] [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]

27
28 ⁸ <https://www.bloomberg.com/profiles/companies/0058736D:US-lion-capital-americas-inc.>

294. Lion Capital and Lion Americas participated in the conspiracy alleged in this pleading through Lindberg, Chang, and Capps (as well as other employees of both entities), and the actions taken by these individuals in furtherance of the conspiracy (as alleged below) were taken on behalf of both Lion Capital and Lion Americas in their official capacities as senior executives of both entities. Additionally, upon information and belief, at least one among Chang, Lindberg, and Capps is an officer of Big Catch, and took steps in furtherance of the conspiracy (as alleged in this pleading) on behalf of both Lion and Big Catch.

295. Lion Capital, Lion Americas, and Big Catch are all parent companies of Bumble Bee. Further discovery will reveal the exact relationship between and among these companies. As alleged in this pleading, “Lion” shall refer to Lion Capital, Lion Americas, and Big Catch unless otherwise specifically noted. As described below, during the time period after Lion acquired Bumble Bee in 2010, Lion: (i) directly participated in the conspiracy; and/or (ii) Bumble Bee is the alter ego of Lion. Lion is only being sued in its direct capacity or based on vicarious liability for the time period between 2010 (when it acquired Bumble Bee) and 2015. Further discovery will be necessary to determine what Lion knew about the conspiracy before it bought Bumble Bee.

296. Defendant Christopher Lischewski is and has been Bumble Bee’s CEO and President during the entirety of the relevant conspiracy period. He is a resident of San Diego County, California. Plaintiffs sue Lischewski in both his individual and official capacity for his participation in the conspiracy between at least 2004 and 2015.

C. Lion Directly Participated in the Conspiracy

297. Lion directly participated in the conspiracy alleged in this Third Consolidated Amended Complaint and purposefully directed this conduct at the United States (including the forum State). Lion was aware of the conspiracy, took

1 acts in furtherance of the conspiracy, and knowingly accepted the proceeds of
2 Bumble Bee's unlawful conduct.

3 298. [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 [REDACTED] It bears noting that later, when the United States Department of
10 Justice ("DOJ") conducted its due diligence review of TUG's announced plan in
11 late 2014 to purchase Bumble Bee from Lion, DOJ discovered by late 2015 that
12 "the parties knew or should have known from the get go – that the [packaged
13 seafood] market is not functioning competitively today..."⁹ (Emphasis added.)
14 (At the time, TUG and Bumble Bee called off their deal.) In other words, a
15 sophisticated entity with non-public access to Bumble Bee's executives (if they
16 were truthful) and records regarding the company's packaged seafood business,
17 pricing and communications with competitors would have discovered reasonably
18 soon, *i.e.*, "from the get go," the existence of the conspiracy. [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 299. [REDACTED]
24 [REDACTED]
25 [REDACTED]

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28 ⁹ <https://www.justice.gov/opa/pr/chicken-sea-and-bumble-bee-abandon-tuna-merger-after-justice-department-expresses-serious>.

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302. [REDACTED]

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303. [REDACTED]

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304. [REDACTED]

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[REDACTED]

[REDACTED]

305. [REDACTED]

[REDACTED]

[REDACTED]

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306. [REDACTED]

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[REDACTED]

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308. [REDACTED]

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[REDACTED]

309. [REDACTED]

[REDACTED]

310. [REDACTED]

[REDACTED]

10 [REDACTED]

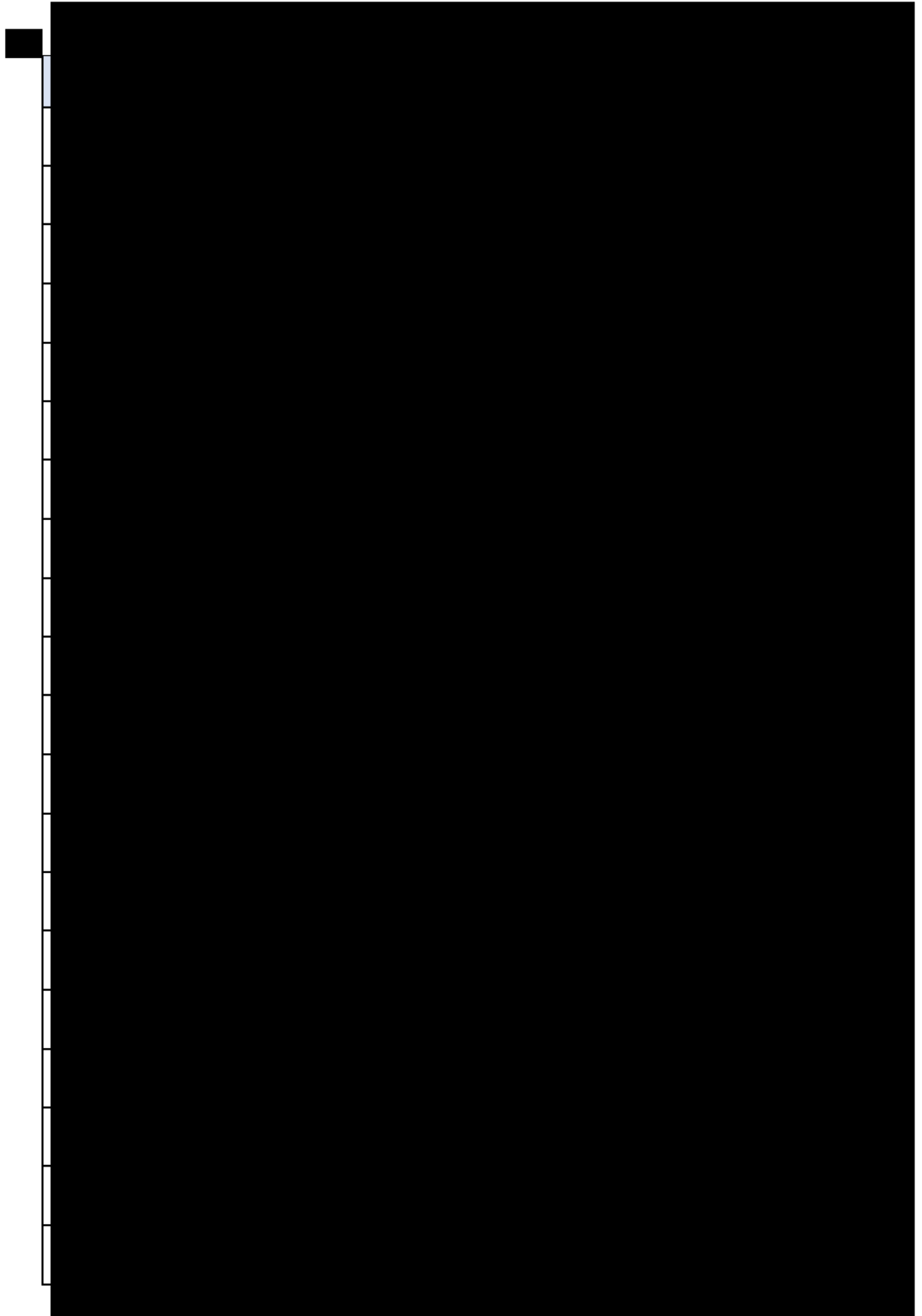
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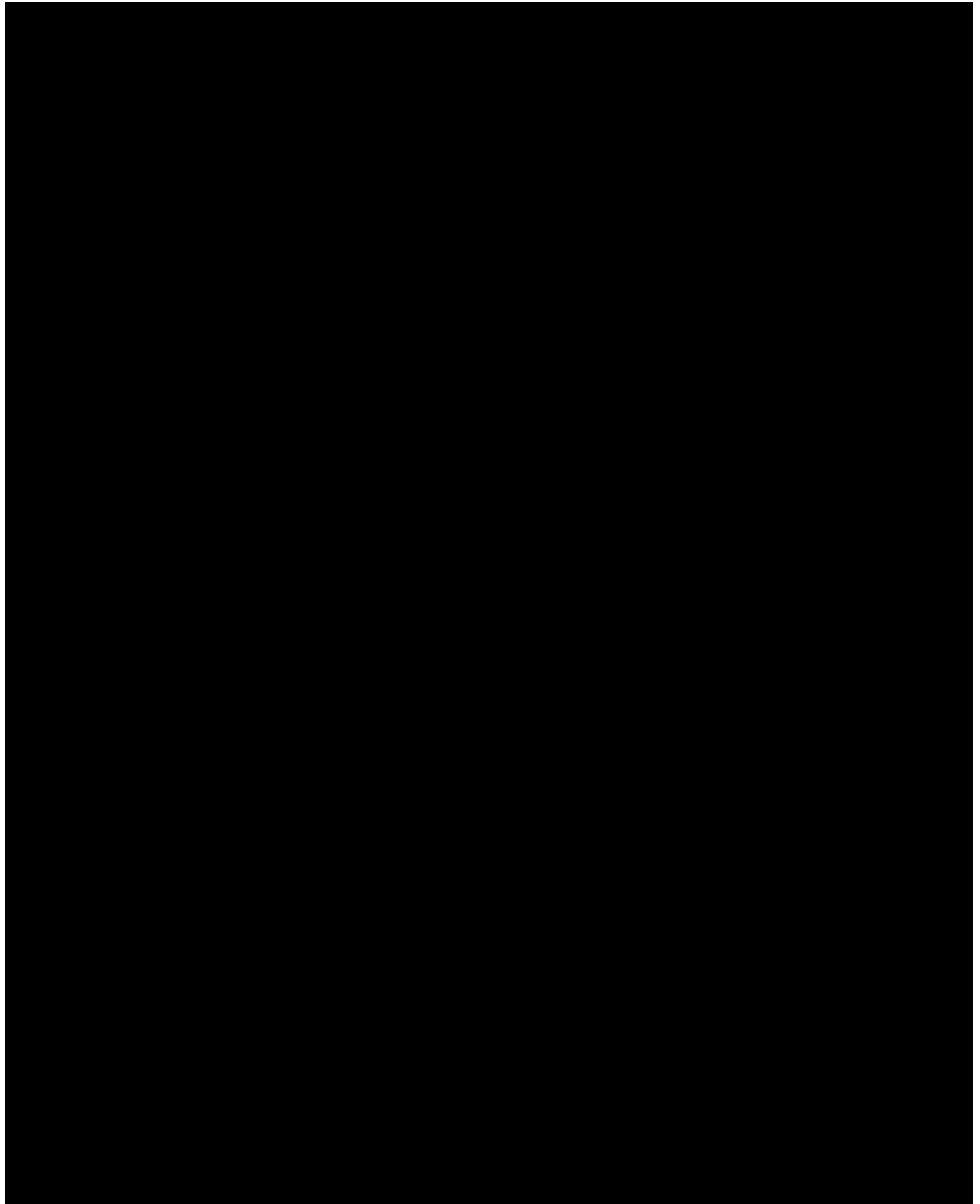
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[REDACTED]

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[REDACTED]

317. [REDACTED]

318. [REDACTED]

319. [REDACTED]

¹²
[REDACTED].

1 [REDACTED]
2 [REDACTED]
3 **D. Lion is Vicariously Liable For Bumble Bee's Conspiratorial**
4 **Conduct Under an Alter Ego Theory**

5 320. As an additional or alternative basis for Lion's liability as alleged in
6 this pleading, Lion is vicariously liable to Plaintiffs because Bumble Bee is Lion's
7 alter ego. First, Lion is vicariously liable for Bumble Bee's conduct under an alter
8 ego theory because Lion undercapitalized Bumble Bee at the time of the
9 acquisition in 2010, and kept Bumble Bee undercapitalized thereafter. This
10 undercapitalization alone is a legal basis to hold Lion vicariously liable for Bumble
11 Bee's unlawful conduct. In the alternative, Lion is vicariously liable for Bumble
12 Bee's conspiratorial actions because a unity of interest exists between Lion and
13 Bumble Bee, and an inequitable result would occur if Lion were not liable for
14 Bumble Bee's misconduct. Accordingly, justice dictates holding Lion vicariously
15 liable for Bumble Bee's conspiratorial activities.

16 **1. Undercapitalization**

17 321. [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]

27 322. [REDACTED]
28 [REDACTED]

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323. [REDACTED]

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327. [REDACTED]

[REDACTED]

328. [REDACTED]

[REDACTED]

329. [REDACTED]

[REDACTED]

2. Unity of Interest and Inequitable Result

330. [REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

331. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

332. In fact, Lion’s website advertises Lion as a private equity firm that closely manages the business affairs of the companies in which it invests. Lion’s website states that Lion “ensure[s] that [its] companies have the best management talent to execute the vision that we develop in a collaborative partnership” while never forgetting “the responsibility for successful outcomes in our companies rests with us [Lion].” Lea, Lion’s founder, echoed this sentiment in an interview on the website: “If all they [companies Lion acquires] want is a check, there are plenty of

1 private equity firms that are delighted to write you a check and let you get on with
2 your business. That's not us...We're not good at that. What we're good at doing
3 is being your partner." Further, a video on the Lion website states that: "We [Lion
4 Capital] built a team with an intimate knowledge of the way consumers and brands
5 interact, allowing us to work with companies in a very different way to the average
6 private equity firm...We work closely with management to see exactly what a
7 brand is capable of achieving, and then take it to new heights.... We focus solely
8 on retail and consumer businesses so our team is uniquely positioned to work with
9 management to identify the right strategies for revitalizing operations." (Emphasis
10 added.)

11 333. [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
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27 [REDACTED]

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See supra note 6.

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 334. [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED] [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 335. [REDACTED]
15 [REDACTED]
16 [REDACTED] [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 336. Accordingly, Lion and Bumble Bee share a unity of interest and a
23 unity of purpose.

24 337. [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 338. [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 339. [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 340. For all of these reasons, Bumble Bee and Lion's separate corporate
15 existences should be disregarded because it would result in an injustice.
16 341. [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
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15 *Id.*

1 342. [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 **COUNT I**

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

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

13 344. Defendants' anticompetitive acts were intentional, were directed at the
14 United States Packaged Tuna market, and had a substantial and foreseeable effect
15 on interstate commerce by raising and fixing Packaged Tuna prices throughout the
16 United States.

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

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

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

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

26 346. Defendants' and their co-conspirators' anticompetitive activities
27 directly and proximately caused injury and harm to Plaintiffs in the United States.
28

1 347. As a direct and proximate result of Defendants' unlawful conduct,
2 Plaintiffs paid artificially inflated prices for Packaged Tuna.

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

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs pray that the Court:

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

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

15 D. Award Plaintiffs their attorneys' fees, litigation expenses, court costs,
16 and pre-judgment and post-judgment interest at the highest rates permitted by
17 United States law; and

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

20 **JURY DEMAND**

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

1 Dated: April 17, 2018

2 **KAPLAN FOX & KILSHEIMER LLP**

3 By: /s/ Laurence D. King

4 Laurence D. King

5 Laurence D. King (SBN 206423)

6 Mario M. Choi (SBN 243409)

7 350 Sansome Street, Suite 400

8 San Francisco, CA 94104

9 Telephone: 415-772-4700

10 Facsimile: 415-772-4707

11 Email: lking@kaplanfox.com

12 Email: mchoi@kaplanfox.com

13 **KAPLAN FOX & KILSHEIMER LLP**

14 Robert N. Kaplan

15 Gregory K. Arenson

16 Elana Katcher

17 Matthew P. McCahill

18 850 Third Avenue, 14th Floor

19 New York, NY 10022

20 Telephone: (212) 687-1980

21 Facsimile: (212) 687-7714

22 Email: rkaplan@kaplanfox.com

23 Email: garensen@kaplanfox.com

24 Email: ekatcher@kaplanfox.com

25 Email: mmccahill@kaplanfox.com

26 **HAJJAR PETERS, LLP**

27 Johnny K. Merritt

28 3144 Bee Cave Road

Austin, TX 78746

Telephone: (512) 637-4956

Facsimile: (512) 637-4958

Email: jmerritt@legalstrategy.com

THE COFFMAN LAW FIRM

Richard L. Coffman
First City Building
505 Orleans St., Fifth Floor
Beaumont, TX 77701
Telephone: (409) 833-7700
Facsimile: (866) 835-8250
Email: rcoffman@coffmanlawfirm.com

MARCUS & SHAPIRA LLP

Bernard D. Marcus
Moirra C. Cain-Mannix
Erin Gibson Allen
One Oxford Center, 35th Floor
Pittsburgh, PA 15219
Telephone: (412) 471-3490
Facsimile: (412) 391-8758
Email: marcus@marcus-shapira.com
Email: cain-mannix@marcus-shapira.com
Email: allen@marcus-shapira.com

MAURIELLO LAW FIRM, APC

Thomas D. Mauriello
1181 Puerta Del Sol, #120
San Clemente, CA 92673
Telephone: (949) 542-3555
Facsimile: (949) 606-9690
Email: tomm@maurlaw.com

WILLIAMS MONTGOMERY & JOHN, LTD.

Eric R. Lifvendahl
233 S. Wacker Drive, Suite 6100
Chicago, IL 60606
Telephone: (312) 443-3230
Facsimile: (312) 630-8530
Email: ERL@willmont.com

ANDERSON KILL, P.C.

Lawrence Kill

Linda Gerstel

1251 Avenue of the Americas

New York, NY 10020

Telephone: (212) 278-1722

Facsimile: (212) 278-1733

Email: lkill@andersonkill.com

Attorneys for Plaintiffs