UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

ASSOCIATED GROCERS, INC.; ACTION MEAT DISTRIBUTORS, INC.; AFFILIATED FOODS, INC.; ALEX LEE, INC.; ASSOCIATED FOOD STORES, INC.; BIG Y FOODS, INC.; BROOKSHIRE BROTHERS, INC.; BROOKSHIRE GROCERY COMPANY; COLORADO BOXED BEEF CO.; PREFCO DISTRIBUTION, LLC; THE GOLUB CORPORATION; NICHOLAS & CO., INC.; PFD ENTERPRISES, INC.; SPRINGFIELD GROCER COMPANY; THE DISTRIBUTION GROUP, INC.; TOPCO ASSOCIATES, LLC; TROYER FOODS, INC.; UNIPRO FOODSERVICE, INC.; and URM STORES, INC.,	**COMPLAINT FOR VIOLATION OF THE ANTITRUST LAWS**
Plaintiffs	**Jury Trial Demanded**
-vs.-	
CARGILL, INC.; CARGILL MEAT SOLUTIONS CORPORATION (A/K/A CARGILL PROTEIN, A/K/A CARGILL PROTEIN - NORTH AMERICA); JBS S.A., JBS USA FOOD COMPANY; SWIFT BEEF COMPANY; JBS PACKERLAND, INC.; NATIONAL BEEF PACKING CO.; TYSON FOODS, INC; and TYSON FRESH MEATS, INC.,	
Defendants	

Plaintiffs Associated Grocers, Inc. Action Meat Distributors, Inc., Affiliated Foods, Inc., Alex Lee, Inc., LLC, Associated Food Stores, Inc., Big Y Foods, Inc., Brookshire Brothers, Inc., Brookshire Grocery Company, Colorado Boxed Beef Co., Prefco Distribution, LLC, The Golub Corporation, Nicholas & Co., Inc., PFD Enterprises, Inc., Springfield Grocer Company, The Distribution Group, Inc., Topco Associates, LLC, Troyer Foods, Inc., UniPro Foodservice, Inc., and URM Stores, Inc. (collectively "Plaintiffs") file this Complaint against Defendants Cargill, Inc. ("Cargill"), Cargill Meat Solutions Corporations (a/k/a Cargill Protein a/k/a Cargill Protein – North America) ("CMS"), JBS S.A., JBS USA Food Company ("JBS USA"), Swift Beef Company ("Swift"), JBS Packerland, Inc. ("Packerland"), National Beef Packing Company ("National Beef"), Tyson Foods, Inc. ("Tyson Foods"), Tyson Fresh Meats, Inc. ("Tyson Fresh") (collectively, "Defendants"), including their unnamed co-conspirators, and allege the following:

INTRODUCTION

1. This is an antitrust case. Defendants are the world's largest beef processing and packing companies, also known in the industry as meatpackers or packers. In 2018, for example, Defendants sold approximately 80% of the more than 25 billion pounds of fresh and frozen beef sold in the U.S. market. Throughout the Relevant Period (defined below), Defendants also collectively controlled approximately 81%–85% of the domestic cattle processed (a/k/a slaughtered) in the U.S. market. The next largest meatpacker had only a 2%–3% market share.

2. From at least January 1, 2015, until the effects of the conspiracy ended which occurred no earlier than December 31, 2021 (the "Relevant Period"), Defendants exploited their market power in this highly concentrated market by conspiring to limit the supply, and fix the prices, of beef sold to Plaintiffs in the U.S. wholesale market, which resulted in higher prices paid by Plaintiffs. For purposes of this Complaint, the term "beef" means boxed and cased-ready meat

processed by Defendants and other smaller, nondefendant producers from fed cattle, including primals, trim or sub-primal products, further-processed and value-added products, offal or variety products, rendered products and byproducts, and ground beef made from "cattle" (meaning "fed cattle," which are steers and heifers raised in feedlots on concentrated diets to be produced and sold as beef). "Beef," however, excludes ground beef made from culled dairy cows.

3. The principal, but not exclusive, means Defendants used to effectuate their conspiracy was a scheme to artificially constrain the supply of beef entering the domestic supply chain. Defendants' collusive restriction of the beef supply had the intended effect of artificially inflating beef prices. As a result, during the Relevant Period, Plaintiffs paid higher prices for beef than they otherwise would have paid in a competitive market.

4. The United States (U.S.) Department of Justice ("DOJ") and the U.S. Department of Agriculture ("USDA") have launched investigations into whether Defendants fixed beef prices in the United States. In mid-2020, news sources reported that DOJ's Antitrust Division sent civil investigative demands to Defendants Tyson Foods, JBS SA, and Cargill, Inc., and to National Beef, Inc. (a company related to Defendant National Beef) seeking information about their pricing and anticompetitive practices dating back to January 2015.

5. Defendants' illegal activities have also invited Congressional scrutiny. In a June 2021 letter from 26 U.S. Senators to the DOJ, they described Defendants' actions as follows: "From our perspective, the anticompetitive practices occurring in the industry today are unambiguous and either our antitrust laws are not being enforced or they are not capable of addressing the apparent oligopoly that so plainly exists." The letter also noted that "[f]or far too long, cattle producers and consumers have been hurt by the increasing concentration of market power and anti-competitive actions of just a few meatpacking companies. Their collective power

over the beef processing industry allows them to seemingly control prices at their will." The Senators requested the DOJ and the USDA to investigate potential market manipulation and other illegal activity by Defendants

6. Plaintiffs understand from recently-unsealed information and court filings in litigation brought by cattle ranchers that a confidential witness, referred to in this Complaint as "Witness 1," who was previously employed by Defendant Swift at its Cactus, Texas slaughter plant, has confirmed the existence of an unlawful conspiracy by and among Defendants.

7. Witness 1 confirmed that all Defendants agreed to reduce their cattle purchases and slaughter volumes for the purpose and effect of increasing their margins (*i.e.*, the spread between what Defendants pay cattle ranchers for fed cattle and the price they charge Plaintiffs). Defendants' transactional data and slaughter volume records, information published by the USDA, and Defendants' public calls for industry-wide slaughter and capacity reductions corroborate Witness 1's account.

8. In addition to the high concentration in the beef industry, other structural characteristics of the domestic beef market facilitated Defendants' conspiracy. Defendants are at the top of the supply and distribution chain that ultimately delivers beef to the market. Their role is to purchase cattle from the nation's farmers and ranchers, slaughter, pack cattle into beef, and sell the beef to Plaintiffs and others. Defendants' pivotal role in the process enabled them to collusively control upstream and downstream beef pricing throughout the Relevant Period.

9. Other market characteristics serve as plus factors supporting the inference of collusion by and among Defendants during the Relevant Period, including producer concentration, high barriers to entry, inelastic demand, the commodity nature of beef, frequent opportunities to conspire, market share stability, and decreased imports. These economic factors

encouraged and solidified the formation of Defendants' conspiracy and fostered its successful operation.

10. Defendants capitalized on the fundamental mechanism of supply and demand operating in a beef market vulnerable to successful cartel formation and operation, and illegally collaborated to restrain and manage production of beef in the United States.

11. These practices created surpluses in the cattle market – the market in which Defendants buy product from ranchers – and shortages in the beef market. These artificial conditions, in turn, boosted the prices Defendants charged, and which Plaintiffs had no choice but to pay, for beef. The results intended and achieved by Defendants were higher profit margins (*e.g.*, meat margins) during the Relevant Period than would have otherwise existed in a competitive market, and injury and damage to Plaintiffs' businesses and property.

12. The growth of Defendants' profit margins was aided by the way supply and demand operate in the beef industry. The supply of cattle is insensitive to short-term price changes because of the long lifecycle of livestock, livestock's perishable nature, and the lack of any alternative use for livestock. Beef demand is also relatively insensitive to price fluctuations. As a result, Defendants' profit margins were (and are) very responsive to changes in the aggregate volume of slaughtered cattle.

13. Another form of interaction conducive to Defendants' collusion was frequent meetings between each other's executives and key employees. Trade association conferences and other industry events offered convenient opportunities to exchange information, plans, and strategies, and to build relationships. As described throughout this Complaint, Defendants used these opportunities to advance their collusive supply restrictions.

14. By the beginning of 2015, Defendants were exploiting favorable market conditions to launch their conspiracy. At that time, they undertook a campaign of reducing and restraining the processed beef supply. Publicly available industry data demonstrate Defendants' abrupt transition from competition to collusion, managing their respective slaughter volumes during the Relevant Period.

15. Each Defendant family curtailed its annual slaughter volumes during the Relevant Period.

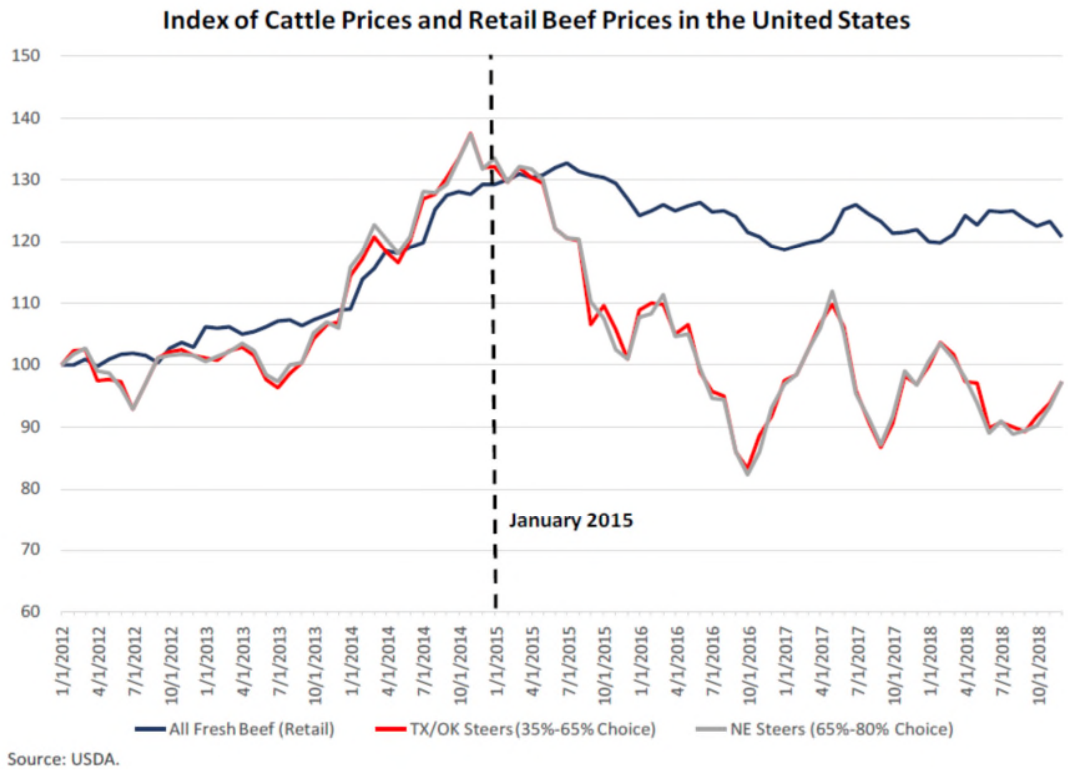
16. As an immediate consequence of Defendants' reduced supply, the beef market experienced a dramatic change in price behavior. Before 2015, prices of cattle and beef predictably moved in tandem—which was the natural economic relationship in a competitive market because beef is processed cattle.

17. But, at the start of the Relevant Period, when Defendants began cutting production, this fundamental economic relationship between cattle and beef prices abruptly changed. The degree of correlation of cattle and beef prices diverged (to Defendants' benefit) without any credible, non-collusive explanation. The relevant supply and demand factors in the industry no longer explained the prices charged to direct purchasers, including Plaintiffs.

18. Starting in 2015, wholesale beef prices began to show unusual trends. The per-pound price of cattle had historically stayed within 20 to 40 cents of the per-pound average wholesale price of beef. But in 2015, the spread between those prices increased dramatically.

19. The figure below contains indices of the prices paid for cattle both Texas/Oklahoma steers (35%- 65% choice) and Nebraska steers (65%-80% choice)), as well as retail beef prices in the United States. As shown, these price indices moved together from 2012 to 2014. However, beginning around early 2015, cattle prices began falling dramatically while retail

beef prices remained relatively stable. The disparity between these prices represents a significant departure from historical trends and is at odds with competitive behavior, and further is highly suggestive of anticompetitive conduct as the driving force of these price disparities.



20. According to USDA Economic Research Service data, the average spread between the average farm price of cattle and wholesale price of beef was substantially higher during the Relevant Period than during the preceding five years. From 2010 to 2014, the average farm-to-wholesale spread was about $34. But from 2015 to 2018, the average spread was about $54—a 59% increase. The spread continued to balloon, by 2020 reaching about $71, a 109% increase from the pre-Relevant Period average.

21. Defendants' ability to cut beef production while maintaining inflated beef prices during the Relevant Period provides compelling circumstantial evidence of their conspiracy. In a

competitive beef market free from collusion, if a competitor reduces its purchase of cattle, other competitors quickly would increase their purchases to boost their processing and sales and increase their market shares.

22. In such an environment, a competitor would not cut its purchases and suffer lost sales. Only colluding meatpackers would expect to benefit by reducing their purchases and slaughter of cattle – because they knew their would-be competitors would not increase their purchasing volumes as would be expected in a competitive market. By concertedly slashing their supply output, Defendants consistently expanded their profit margins, confident that none of them would grab volume from another defendant.

23. United by their conspiracy, Defendants were confident that none of them would break ranks and disproportionately expand their beef production to satisfy unmet demand. Armed with this assurance, Defendants improved their beef margins by achieving and sustaining an unprecedented gap between cattle and beef prices.

24. Buttressed in part by their collective market power in their purchases in the upstream (cattle) and sales in the downstream (beef) markets, Defendants' conspiracy allowed them to steadily enlarge their operating margins throughout the Relevant Period. By the end of 2020, the two largest Defendants, Tyson Foods and JBS USA, reported record margins in their beef business. Tyson Foods reported that its beef business' operating margin was nearly 10.7%—nearly triple its 2014 operating margin. JBS USA reported a higher beef business margin of 11.5% for the first three quarters of 2020.

25. In summary, Defendants colluded during the Relevant Period to reduce beef supplies in tandem, thereby unlawfully raising and fixing beef prices at levels higher than prices would have been had the beef market been competitive. As a direct and proximate result of

Defendants' wrongful actions, Plaintiffs suffered antitrust injury and damages by paying illegally inflated prices for beef that they purchased from Defendants during the Relevant Period.

JURISDICTION AND VENUE

26. Plaintiffs bring this action under Sections 4(a) and 16 of the Clayton Act, 15 U.S.C. §§15(a) and 26, to (i) secure damages for Defendants' violations of Section 1 of the Sherman Act, 15 U.S.C. § 1, and (ii) recover treble damages, costs of suit, and reasonable attorneys' fees for Plaintiffs' injuries, harm, and damages directly and/or proximately resulting from Defendants' conspiracy to artificially raise and fix beef prices and restrain trade in the U.S. beef market.

27. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331, 1337(a), and Sections 4 and 16 of the Clayton Act, 15 U.S.C. § 15 and 26.

28. This Court has personal jurisdiction over each Defendant because each Defendant, throughout the United States, including in this District and the State of Illinois, transacted business, maintained substantial contacts, and/or committed overt acts in furtherance of the above-described illegal scheme and conspiracy (and continues to do so). The alleged scheme and conspiracy were directed at, and had the intended effect of causing injury to, persons and entities residing in, located in, and/or doing business throughout the United States, including this District and the State of Illinois.

29. Defendants' and co-conspirators' above-described wrongful actions were within the intended flow of commerce within the United States and had direct, substantial, and reasonably foreseeable effects on interstate commerce.

30. Venue is proper in the Northern District of Illinois under Sections 4, 12, and 16 of the Clayton Act, 15 U.S.C. §§ 15, 22 and 26, and 28 U.S.C. §§ 1391(b); (c); and (d) because during the Relevant Period, one or more Defendants resided, transacted business, were found, or had

agents in this District (and continue to do so), and a substantial portion of Defendants' alleged wrongful actions affecting interstate trade and commerce was carried out in this District.

31. Defendants are amenable to service of process under Fed. R. Civ. P. 4(k)(1)(A) and the Illinois long-arm statute 734 Ill. Comp. Stat. 5/2-209 because (i) each Defendant transacts and/or transacted business in Illinois, (ii) the Illinois long-arm statute extends jurisdiction to the limits of Due Process, and (iii) each Defendant has sufficient minimum contacts with the state of Illinois to satisfy Due Process.

PARTIES

I. Plaintiffs.

32. Plaintiff Associated Grocers, Inc. ("AGI") is a Louisiana corporation with its principal place of business in Baton Rouge, Louisiana. During the Relevant Period, AGI and/or its affiliates purchased beef at artificially inflated prices directly from one or more of the Defendants and/or their affiliates or agents, and suffered injury, harm, and damages to its business or property as a direct and/or proximate result of Defendants' above-described wrongful actions.

33. Plaintiff Action Meat Distributors, Inc. ("Action Meat") is a Texas corporation with its principal place of business in Houston, Texas. During the Relevant Period, Action Meat and/or its affiliates purchased beef at artificially inflated prices directly from one or more of the Defendants and/or their affiliates or agents, and suffered injury, harm, and damages to its business or property as a direct and/or proximate result of Defendants' above-described wrongful actions.

34. Plaintiff Affiliated Foods, Inc. ("AFI") is a Texas corporation with its principal place of business in Amarillo, Texas. During the Relevant Period, AFI and/or its affiliates purchased beef at artificially inflated prices directly from one or more of the Defendants and/or their affiliates or agents, and suffered injury, harm, and damages to its business or property as a direct and/or proximate result of Defendants' above-described wrongful actions.

35. Plaintiff Alex Lee, Inc., and its subsidiaries and affiliates, including Merchants Distributors, LLC, Lowes Foods, LLC., and W. Lee Flowers & Company, LLC (collectively, "Alex Lee") is a North Carolina corporation with its principal place of business in Hickory, North Carolina. During the Relevant Period, Alex Lee and/or its affiliates purchased beef at artificially inflated prices directly from one or more of the Defendants and/or their affiliates or agents, and suffered injury, harm, and damages to its business or property as a direct and/or proximate result of Defendants' above-described wrongful actions.

36. Plaintiff Associated Food Stores, Inc. ("AFS") is a Utah corporation with its principal place of business in Salt Lake City, Utah. During the Relevant Period, AFS and/or its affiliates purchased beef at artificially inflated prices directly from one or more of the Defendants and/or their affiliates or agents, and suffered injury, harm, and damages to its business or property as a direct and/or proximate result of Defendants' above-described wrongful actions.

37. Plaintiff Big Y Foods, Inc., and its subsidiaries and affiliates, including Table & Vine, Big Y Express, and Fresh Acres Market (collectively "Big Y"), is a Massachusetts corporation with its principal place of business in Springfield, Massachusetts. During the Relevant Period, Big Y and/or its affiliates purchased beef at artificially inflated prices directly from one or more of the Defendants and/or their affiliates or agents, and suffered injury, harm, and damages to its business or property as a direct and/or proximate result of Defendants' above-described wrongful actions.

38. Plaintiff Brookshire Brothers, Inc. ("BBI") is a Texas corporation with its principal place of business in Lufkin, Texas. During the Relevant Period, BBI and/or its affiliates purchased beef at artificially inflated prices directly from one or more of the Defendants and/or their affiliates

or agents, and suffered injury, harm, and damages to its business or property as a direct and/or proximate result of Defendants' above-described wrongful actions.

39. Plaintiff Brookshire Grocery Company ("BGC") is a Texas corporation with its principal place of business in Tyler, Texas. During the Relevant Period, BGC and/or its affiliates purchased beef at artificially inflated prices directly from one or more of the Defendants and/or their affiliates or agents, and suffered injury, harm, and damages to its business or property as a direct and/or proximate result of Defendants' above-described wrongful actions.

40. Plaintiff Colorado Boxed Beef Co. ("CBBC") is a Florida corporation with its principal place of business in Lakeland, Florida. During the Relevant Period, CBBC and/or its affiliates purchased beef at artificially inflated prices directly from one or more of the Defendants and/or their affiliates or agents, and suffered injury, harm, and damages to its business or property as a direct and/or proximate result of Defendants' above-described wrongful actions.

41. Plaintiff Prefco Distribution, LLC ("Prefco"), is a Florida corporation with its principal place of business in Lakeland, Florida. During the Relevant Period, Prefco and/or its affiliates purchased beef at artificially inflated prices directly from one or more of the Defendants and/or their affiliates or agents, and suffered injury, harm, and damages to its business or property as a direct and/or proximate result of Defendants' above-described wrongful actions.

42. Plaintiff The Golub Corporation ("Golub"), which does business under the banners Price Chopper Supermarkets, Market Bistro, and Market 32, is a New York corporation with its principal place of business in Schenectady, New York. During the Relevant Period, Golub and/or its affiliates purchased beef at artificially inflated prices directly from one or more of the Defendants and/or their affiliates or agents, and suffered injury, harm, and damages to its business or property as a direct and/or proximate result of Defendants' above-described wrongful actions.

43. Plaintiff Nicholas & Co., Inc. ("Nicholas") is a Utah corporation with its principal place of business in Salt Lake City, Utah. During the Relevant Period, Nicholas and/or its affiliates purchased beef at artificially inflated prices directly from one or more of the Defendants and/or their affiliates or agents, and suffered injury, harm, and damages to its business or property as a direct and/or proximate result of Defendants' above-described wrongful actions.

44. Plaintiff PFD Enterprises, Inc. d/b/a Pacific Food Distributors ("PFD") is an Oregon corporation with its principal place of business in Clackamas, Oregon. During the Relevant Period, PFD and/or its affiliates purchased beef at artificially inflated prices directly from one or more of the Defendants and/or their affiliates or agents, and suffered injury, harm, and damages to its business or property as a direct and/or proximate result of Defendants' above-described wrongful actions.

45. Plaintiff Springfield Grocer Company, Inc. ("SGC") is a Missouri corporation with its principal place of business in Springfield, Missouri. During the Relevant Period, SGC and/or its affiliates purchased beef at artificially inflated prices directly from one or more of the Defendants and/or their affiliates or agents, and suffered injury, harm, and damages to its business or property as a direct and/or proximate result of Defendants' above-described wrongful actions.

46. Plaintiff The Distribution Group, d/b/a Van Eerden Foodservice Co. ("Van Eerden") is a Michigan corporation with its principal place of business in Grand Rapids, Michigan. During the Relevant Period, Van Eerden and/or its affiliates purchased beef at artificially inflated prices directly from one or more of the Defendants and/or their affiliates or agents, and suffered injury, harm, and damages to its business or property as a direct and/or proximate result of Defendants' above-described wrongful actions.

47. Plaintiff Topco Associates, LLC ("Topco") is privately held Illinois limited liability company with its principal place of business in Elk Grove Village, Illinois (within this District). During the Relevant Period, Topco and/or its affiliates purchased beef at artificially inflated prices directly from one or more of the Defendants and/or their affiliates or agents, and suffered injury, harm, and damages to its business or property as a direct and/or proximate result of Defendants' above-described wrongful actions.

48. Plaintiff Troyer Foods, Inc. ("Troyer") is an Indiana corporation with its principal place of business in Goshen, Indiana. During the Relevant Period, Troyer and/or its affiliates purchased beef at artificially inflated prices directly from one or more of the Defendants and/or their affiliates or agents, and suffered injury, harm, and damages to its business or property as a direct and/or proximate result of Defendants' above-described wrongful actions.

49. Plaintiff UniPro Foodservice, Inc. ("UniPro") is a Delaware corporation with its principal place of business in Atlanta, Georgia. During the Relevant Period, UniPro and/or its affiliates purchased beef at artificially inflated prices directly from one or more of the Defendants and/or their affiliates or agents, and suffered injury, harm, and damages to its business or property as a direct and/or proximate result of Defendants' above-described wrongful actions.

50. Plaintiff URM Stores, Inc. ("URM") is a Washington corporation with its principal place of business in Spokane, Washington. During the Relevant Period, URM and/or its affiliates purchased beef at artificially inflated prices directly from one or more of the Defendants and/or their affiliates or agents, and suffered injury, harm, and damages to its business or property as a direct and/or proximate result of Defendants' above-described wrongful actions.

II. Defendants and their Subsidiaries and Affiliates.

51. The term "Defendants" includes Defendants and all their predecessors, successors, assigns, including beef meatpackers merged with or acquired by any Defendant and each

Defendant's current or former wholly owned or controlled subsidiaries or affiliates that sold beef in interstate commerce directly to purchasers in the United States, including this District, during the Relevant Period.

52. Each Defendant sold or distributed beef to direct purchasers or played a material role in the coordinated and collusive behavior alleged during the Relevant Period. All Defendants were active, knowing participants in the alleged conspiracy, and their conduct, to the extent committed by Defendants, was known to, and approved by, their co-Defendant parent companies.

A. The Cargill Defendants.

53. Defendant Cargill, Inc. is a privately held Delaware corporation with its principal place of business at 15407 McGinty Road, Wayzata, Minnesota 55391. During the Relevant Period, Cargill, Inc. and/or its predecessors, wholly owned or controlled subsidiaries, and/or affiliates sold beef in interstate commerce, directly or through Cargill, Inc.'s wholly owned or controlled affiliates, to purchasers in the United States, including this District, and engaged in the above-described wrongful actions that directly and/or proximately caused Plaintiffs to suffer injury, harm, and damages to their businesses or property. Cargill, Inc. is the parent company of the Cargill Defendants.

54. Defendant Cargill Meat Solutions Corporation (a/k/a Cargill Protein) ("CMS") is a Delaware corporation with its principal place of business at 825 East Douglas Avenue, Wichita, Kansas 67202. CMS is the principal operating entity within Cargill, Inc.'s U.S. cattle and beef business, and is a wholly owned subsidiary of Cargill, Inc. On information and belief, CMS owns directly, or indirectly through its subsidiaries, Cargill, Inc.'s U.S. fed cattle slaughter plants, and contracts for the purchase of cattle slaughtered there. CMS engaged in the above-described wrongful actions that directly and/or proximately caused Plaintiffs to suffer injury, harm, and damages to their businesses or property.

55. Throughout the Relevant Period, Defendant Cargill, Inc. wholly owned, as a direct or indirect subsidiary, Defendant CMS and sold, along with CMS, beef in interstate commerce, directly or through its wholly owned or controlled affiliate, to purchasers in the United States, including this District.

56. During the Relevant Period, Defendants Cargill, Inc. and CMS shared a unity of corporate interest and operated as part of a single enterprise in furtherance of the above-described conspiracy that purposefully directed conduct causing injury, harm, and damages to, Plaintiffs in the United States, including this District. And derived a direct benefit from the conspiracy.

57. A parent entity and its wholly owned subsidiaries and/or affiliates, such as and including the Cargill Defendants, have a complete unity of interest. Their objectives are common, not disparate, and their actions are guided or determined not by two, separate corporate consciousnesses, but by one. Accordingly, the coordinated activity of a parent entity and its wholly owned culpable subsidiaries and/or affiliates is viewed as that of a single enterprise for purposes of Section 1 of the Sherman Act.

58. A parent entity and its wholly owned culpable subsidiaries and/or affiliates, such as and including the Cargill Defendants, always have a unity of purpose and thus act as a single enterprise whenever they engage in coordinated activity. By controlling, dictating, or encouraging their culpable subsidiaries' and/or affiliates' anticompetitive conduct to advance a common scheme for an illegal and anticompetitive purpose, Cargill, Inc., as the parent entity of the Cargill Defendants, independently entered and participated in the illegal enterprise with its culpable subsidiaries and/or affiliates. In doing so, Cargill, Inc. engaged in sufficient independent participation in the conspiracy, and had sufficient knowledge, intent, and involvement in Defendants' conspiracy, to be liable under the Sherman Act as a single enterprise with its

subsidiaries and affiliates. During the Relevant Period, Cargill, Inc. shared a unity of corporate interest and operated as part of a single enterprise with its culpable subsidiaries and/or affiliates to advance the alleged conspiracy.

59. Rather than owning and operating subsidiaries to diversify risk and earn profits by investing in them, Cargill, Inc. formed subsidiaries to conduct business that it otherwise would have conducted itself. To this end, Cargill, Inc. created CMS to conduct its business in the meat industry that Cargill, Inc. previously operated itself.

60. Cargill, Inc. presents itself and its subsidiaries to the public as a single unified enterprise. For example, on its website, Cargill, Inc. reports that it employs 155,000 workers in 70 countries. On information and belief, these numbers include CMS employees. Cargill, Inc. has also publicly announced consolidated revenues, earnings, and cash flow that, on further information and belief, include performance results from CMS's beef operations.

61. In the Letter to Stakeholders included in Cargill, Inc.'s 2019 Annual Report, Cargill, Inc. reported that it "delivered $2.82 billion in adjusted operating earnings in fiscal 2019. Revenues dipped 1% to $113.5 billion. Cash flow from operations totaled $5.19 billion." On information and belief, those statistics include earnings, revenues, and cash flows from all Cargill, Inc. subsidiaries, as well as Cargill, Inc. itself. In the same document, Cargill, Inc. reported that its "[e]arnings were led by our North American protein businesses. With steady domestic and export demand, and plentiful cattle supplies, the beef business posted its third consecutive year of strong performance."

62. There is one unified system that processes both companies' purchase orders, which further demonstrates the relationship between Cargill, Inc. and CMS. Cargill, Inc. also operates

other business services, including information technology, human resources, finance, transportation and logistics, and procurement, with and for CMS.

63. Cargill, Inc. plays an active role in managing CMS's business operations. As one example, Cargill, Inc.'s website reported that its chairman and CEO, David MacLennan, "supervised several businesses in Cargill Protein," which subsumes CMS.

64. As another example, Cargill, Inc. describes the responsibilities of executive team member, Brian Sikes, as including "leading Cargill's global protein and salt businesses," overseeing "Cargill's protein business in North America and Europe," and leading "the transformation of the North American protein business." Mr. Sikes lives in Wichita, Kansas, the location of CMS' principal place of business.

65. Finally, Cargill, Inc.'s slaughter plants in Fresno, California, Wyalusing, Pennsylvania, and Friona, Texas all list either "Cargill" or "Cargill Beef" as DBAs with the USDA Food Safety Inspection Service.

66. Cargill, Inc.'s extensive involvement in CMS's management and operations demonstrates these entities' unity of purpose (*e.g.*, to profit from their price fixing) and common objectives. Cargill, Inc.'s extensive involvement in CMS's management and operations further demonstrates that Cargill, Inc. does far more than provide long-term strategy or guidance to CMS. Cargill, Inc. created CMS as its instrumentality to execute Cargill, Inc.'s directives. Throughout the Relevant Period, Cargill, Inc. exerted, and had the right to exert, control over CMS. In this manner, Cargill, Inc. independently participated in the illegal enterprise with CMS and, as a result, has sufficient knowledge, intent, and involvement in Defendants' conspiracy to be found liable under the Sherman Act with CMS as a single enterprise.

B. The JBS Defendants.

67. Defendant JBS S.A. is a Brazilian corporation with its principal place of business at Av. Marginal Direta do Tiete, 500 Bloco 3-30 andar, Vila Jaguara, Sao Paulo 05.118-100, Brazil. During the Relevant Period, JBS S.A. and/or its predecessors, wholly owned or controlled subsidiaries, or affiliates sold beef in interstate commerce, directly or through JBS S.A.'s wholly owned or controlled affiliates, to purchasers in the United States, including this District, and engaged in the above-described wrongful actions that directly and/or proximately caused Plaintiffs to suffer injury, harm, and damages to their businesses or property. JBS S.A. is the parent company of the JBS Defendants.

68. JBS S.A. is also the primary owner of Pilgrim's Pride Corporation, one of the world's largest poultry producers, which recently plead guilty to price-fixing charges in the broiler chicken industry, paying a $107 million criminal fine for its role in a long-running cartel targeting Plaintiffs and other direct purchasers of broiler chicken in the United States.

69. Defendant JBS USA Food Company ("JBS USA") is one of the world's largest beef and pork processing companies. JBS USA is a Delaware corporation with its principal place of business at 1770 Promontory Circle, Greeley, Colorado 80634. JBS USA is the principal operating entity within Defendant JBS S.A.'s U.S. cattle and beef business, the contracting entity for certain of JBS S.A.'s purchases of fed cattle in the United States, and engaged in the above-described wrongful actions that directly and/or proximately caused Plaintiffs to suffer injury, harm, and damages to their businesses or property.

70. Defendant Swift Beef Company ("Swift") is a Delaware corporation with its principal place of business at 1770 Promontory Circle, Greeley, Colorado 80634. Swift owns directly, or indirectly through its subsidiaries, certain of Defendant JBS S.A.'s U.S. fed cattle slaughter plants, including the plants in Cactus, Texas, Greeley, Colorado, Grand Island, Nebraska,

and Hyrum, Utah. Swift contracts for most of the fed cattle to be slaughtered at these plants. Swift engaged in the above-described wrongful actions that directly and/or proximately caused Plaintiffs to suffer injury, harm, and damages to their businesses or property.

71. Defendant JBS Packerland, Inc. ("Packerland") is a Delaware corporation with its principal place of business at 1770 Promontory Circle, Greeley, Colorado 80634. On information and belief, Packerland owns directly, or indirectly through its subsidiaries, certain of JBS S.A.'s U.S. fed cattle slaughter plants, including the Packerland packing plants in Green Bay, Wisconsin and Plainwell, Michigan, the Sun Land beef plant in Tolleson, Arizona, and the Moyer Packing plant in Souderton, Pennsylvania. On information and belief, Packerland contracts for most of the fed cattle to be slaughtered at these plants. Packerland operates a Regional Beef business unit for JBS. Packerland engaged in the above-described wrongful actions that directly and/or proximately caused Plaintiffs to suffer injury, harm, and damages to their businesses or property.

72. Swift and Packerland hired senior personnel to maage cattle procurement and beef production operations in the United States. Various senior staff members and executives responsible for the operation of the JBS Defendants' U.S. fed cattle and beef business during the Relevant Period were employed by each of JBS USA Food Company Holdings, JBS USA Food Company, Swift, and Packerland.

73. During the Relevant Period, JBS S.A. wholly owned as direct or indirect subsidiaries, JBS USA, Swift, and Packerland, sold, along with JBS USA, Swift, and Packerland, beef in interstate commerce, directly or through these wholly owned or controlled affiliates, to purchasers in the United States, including this District, and engaged in the above-described wrongful actions that directly and/or proximately caused Plaintiffs to suffer injury, harm, and damages to their businesses or property.

74. During the Relevant Period, the JBS Defendants shared a unity of corporate interest and operated as part of a single enterprise in furtherance of the above-described conspiracy that purposefully directed conduct causing injury, harm, and damages to Plaintiffs in the United States, including this District. And derived benefit from these actions.

75. A parent entity and its wholly owned subsidiaries and/or affiliates, such as and including the JBS Defendants, have a complete unity of interest. Their objectives are common, not disparate, and their actions are guided or determined not by two, separate corporate consciousnesses, but by one. Accordingly, the coordinated activity of a parent entity and its wholly owned culpable subsidiaries and/or affiliates is viewed as that of a single enterprise for purposes of Section 1 of the Sherman Act.

76. A parent entity and its wholly owned culpable subsidiaries and/or affiliates, such as and including the JBS Defendants, always have a unity of purpose and thus act as a single enterprise whenever they engage in coordinated activity. By controlling, dictating, or encouraging their culpable subsidiaries' and/or affiliates' anticompetitive conduct to advance a common scheme for an illegal and anticompetitive purpose, JBS S.A. as the parent entity of the JBS Defendants, independently entered and participated in the illegal enterprise with its culpable subsidiaries and/or affiliates. In doing so, JBS S.A. engaged in sufficient independent participation in the conspiracy, and had sufficient knowledge, intent, and involvement in Defendants' conspiracy, to be liable under the Sherman Act as a single enterprise with its subsidiaries and affiliates. During the Relevant Period, JBS S.A. shared a unity of corporate interest and operated as part of a single enterprise with its culpable subsidiaries and/or affiliates, to advance the alleged conspiracy.

77. JBS S.A. is not merely a holding company whose business is restricted to investments in operating subsidiaries. JBS S.A. established subsidiaries, including JBS USA, Swift, and Packerland, to conduct its business, including the purchase and processing of cattle and the sale of beef. Had JBS S.A. not created or acquired these subsidiaries, it would have performed these functions itself.

78. JBS S.A. presents itself as a unified enterprise and conducts consolidated earnings calls on which its corporate representatives discuss the operations and profits of JBS S.A., including JBS USA, Swift, and Packerland. On these calls, JBS S.A. executives have described the beef business it conducts through JBS USA, which it refers to as "JBS beef," as a "division" or "business unit." JBS S.A. commonly refers to JBS USA as its "JBS USA beef business[.]" As reported on JBS USA's financial statements, JBS USA "conducts its United States beef and pork processing businesses through its wholly-owned subsidiaries Swift Beef Company ('Swift Beef'), Swift Pork Company ('Swift Pork') and JBS Packerland, Inc."

79. JBS S.A. appointed JBS USA's CEO Andre Nogueira. He "report[s] directly" to JBS Global Operations' CEO. In Mr. Nogueira's online "Welcome" message, he explains that JBS USA operates "[i]n partnership with JBS S.A."

80. Defendants Swift and Packerland are fully integrated into the JBS USA enterprise. They are under the complete control of JBS USA, and in turn, JBS S.A. JBS USA directs and oversees all JBS's U.S. cattle procurement, beef processing, and sales operations, with ultimate direction from JBS S.A. JBS USA's financial statements are replete with references to notes, loans, and credit facilities that "are guaranteed by our Parent, JBS S.A."

81. Swift and JBS Packerland's packing operations are presented as those of JBS USA. For example, they appear on USDA's list of Bonded Packers as "JBS USA Food Company, Swift

Beef Company" and "JBS USA Food Company, JBS Packerland, Inc.," respectively. The USDA's Food Safety and Inspection Service's Inspection Directory lists "JBS," "JBS USA," and "JBS USA Food Company" amongst other DBAs for Swift.

82. JBS S.A.'s extensive involvement in JBS USA's, Swift's, and Packerland's management and operations demonstrates these entities' unity of purpose (*e.g.*, to profit from their price fixing) and common objectives. JBS S.A.'s extensive involvement in JBS USA's, Swift's, and Packerland's management and operations also reveals that these entities' general corporate actions are guided and determined by one corporate consciousness. JBS S.A. does more than just provide long-term strategy and guidance to JBS USA, Swift, and Packerland. The entire purpose of these subsidiaries is to serve as instrumentalities by executing JBS S.A.'s directives within the greater JBS enterprise. Throughout the Relevant Period, JBS S.A. exerted, and had the right to exert, total control over JBS USA, Swift, and Packerland. In this manner, JBS S.A. independently participated in the illegal enterprise with JBS USA, Swift, and Packerland and, as a result, has sufficient knowledge, intent, and involvement in Defendants' conspiracy to be found liable under the Sherman Act with JBS USA, Swift, and Packerland as a single enterprise.

C. National Beef Packing Company.

83. Defendant National Beef Packing Company ("National Beef") is a privately owned Delaware limited liability company with its principal place of business at 12200 North Ambassador Drive, Suite 500, Kansas City, Missouri 64163. National Beef and/or its predecessors, wholly owned or controlled subsidiaries, or affiliates sold beef in interstate commerce, directly or through its wholly owned or controlled affiliates, to purchasers in the United States, including this District, and engaged in the above-described wrongful actions that directly and/or proximately caused Plaintiffs to suffer injury, harm, and damages to their businesses or property.

84. On information and belief, National Beef owns directly, or indirectly through its subsidiaries, National Beef's U.S. fed cattle slaughter plants and contracts for the purchase of cattle slaughtered at such locations including in Dodge City and Liberal Kansas, Tama Iowa and other locations.

D. The Tyson Defendants.

85. Defendant Tyson Foods, Inc. is a publicly traded Delaware corporation headquartered at 2200 Don Tyson Parkway, Springdale, Arkansas 72762**.** During the Relevant Period, Tyson Foods, Inc. and/or its predecessors, wholly owned or controlled subsidiaries, or affiliates sold beef in interstate commerce, directly or through its wholly owned or controlled affiliates, to purchasers in the United States, including this District, and engaged in the above-described wrongful actions that directly and/or proximately caused Plaintiffs to suffer injury, harm, and damages to their businesses or property.

86. Defendant Tyson Fresh Meats, Inc. ("Tyson Fresh") is a wholly owned subsidiary of Tyson Foods. Tyson Fresh is a Delaware corporation with its principal place of business at 800 Stevens Port Drive, Dakota Dunes, South Dakota 57049. Tyson Fresh is the principal operating entity within Tyson Foods' U.S. cattle and beef business, and engaged in the above-described wrongful actions that directly and/or proximately caused Plaintiffs to suffer injury, harm, and damages to their businesses or property.

87. On information and belief, Tyson Fresh owns directly, or indirectly through its subsidiaries, Tyson Foods' U.S. fed cattle slaughter plants and contracts for the purchase of cattle slaughtered in such location.

88. During the Relevant Period, Tyson Foods wholly owned as a direct or indirect subsidiary, Tyson Fresh and sold, along with Tyson Fresh, beef in interstate commerce, directly or through this wholly owned or controlled affiliate, to purchasers in the United States, including

this District, and engaged in the above-described wrongful actions that directly and/or proximately caused Plaintiffs to suffer injury, harm, and damages to their businesses or property.

89. On June 10, 2020, Tyson Foods announced it was fully cooperating with DOJ's price-fixing investigation into the broiler chicken industry under the antitrust division's Corporate Leniency Program.

90. During the Relevant Period, the Tyson Defendants shared a unity of corporate interest and operated as part of a single enterprise in furtherance of the above-described conspiracy that purposefully directed conduct causing injury, harm, and damages to, and derived direct benefit from, Plaintiffs in the United States, including this District.

91. A parent entity and its wholly owned subsidiaries and/or affiliates, such as and including the Tyson Defendants, have a complete unity of interest. Their objectives are common, not disparate, and their actions are guided or determined not by two, separate corporate consciousnesses, but by one. Accordingly, the coordinated activity of a parent entity and its wholly owned culpable subsidiaries and/or affiliates is viewed as that of a single enterprise for purposes of Section 1 of the Sherman Act.

92. A parent entity and its wholly owned culpable subsidiaries and/or affiliates, such as and including the Tyson Defendants, always have a unity of purpose and thus act as a single enterprise whenever they engage in coordinated activity. By controlling, dictating, or encouraging their culpable subsidiaries' and/or affiliates' anticompetitive conduct to advance a common scheme for an illegal and anticompetitive purpose, Tyson Foods as the parent entity of the Tyson defendants, independently entered and participated in the illegal enterprise with its culpable subsidiaries and/or affiliates. In doing so, Tyson Foods engaged in sufficient independent participation in the conspiracy, and had sufficient knowledge, intent, and involvement in the

Defendants' conspiracy, to be liable under the Sherman Act as a single enterprise with its subsidiaries and affiliates. During the Relevant Period, Tyson Foods shared a unity of corporate interest and operated as part of a single enterprise with its culpable subsidiaries and/or affiliates, to advance the alleged conspiracy.

93. Tyson Foods is not a mere holding company whose business is restricted to investments in operating subsidiaries. Rather, Tyson Foods formed subsidiaries to act as its agents and representatives to conduct business activities that Tyson Foods would have otherwise conducted. With respect to Tyson Foods' subsidiary Tyson Fresh, such activities include purchasing and processing cattle and selling beef.

94. Tyson Foods holds itself out to the public as a single unified enterprise, describing the beef business it conducts through Tyson Fresh as a mere "business unit." Indeed, before Noel White became Tyson Foods' CEO (now former CEO), he was "group president of Tyson's Fresh Meats business unit."

95. On its quarterly earnings calls, Tyson Foods' corporate representatives include Tyson Fresh when discussing the company's financial performance. On these calls, Tyson Foods announces operating income and returns on sales from its beef segment business that Tyson Fresh operates. More specifically, on these calls Tyson Foods attributes improved returns to actions taken at plants that Tyson Fresh owns and operates.

96. During a January 31, 2014, earnings call, for example, Tyson Foods' management employees explained to investors that Tyson Foods had generated $58 million in operating income and a 1.6% return on sales from its beef segment business, despite that business being operated directly by Tyson Fresh Meats. On the same call, Tyson Foods' managers stated that "as the calf

crop declines . . . we'll probably have to curtail production." Production of the beef from the calf crop is an activity which is undertaken by Tyson Fresh.

97. On other earning calls, Tyson Foods has described actions taken by Tyson Fresh to advance Defendants' conspiracy. For example, on its August 3, 2015 earnings call, Tyson Foods explained its strategy for cattle purchasing implemented by Tyson Fresh as "we run for margin and not for market share, we're not willing to overpay for cattle and we've had to cut back on our hours at our plants resulting in inefficiencies and added costs."

98. Similarly, on Tyson Foods' May 7, 2018 earnings call, with respect to beef production plants owned and operated by Tyson Fresh, Tyson Foods explained that "we have to stop production, we have closed plants, several times in the quarter, not every plant, but several plants in the quarter."

99. Tyson Foods and Tyson Fresh also guarantee each other's debts. Tyson Fresh has issued multiple debt securities guaranteed by Tyson Foods. In a registration statement filed with the SEC in 2009, Tyson Foods notified investors that Tyson Fresh pledged not only its own assets to guarantee debt instruments but also those of Tyson Foods and certain "other domestic operation subsidiaries of Tyson [Foods]."

100. Similarly, in a 2014 prospectus filed with the SEC, Tyson Foods stated that Tyson Fresh would act as a guarantor to Tyson Foods' debt securities, including debentures, notes, and all other types of debt. Tyson Foods has issued multiple senior notes under this arrangement.

101. Finally, in registrations with the USDA's Food Safety Inspection Service, Tyson Fresh slaughter plants in Dakota City, Nebraska, Lexington, Nebraska, and Amarillo, Texas, identify Tyson Foods as a business name of Tyson Fresh.

102. Tyson Foods' extensive involvement in Tyson Fresh's management and operations demonstrates these entities' unity of purpose and common objectives. Tyson Foods' extensive involvement in Tyson Fresh's management and operations also reveals that these entities' general corporate actions are guided and determined by one corporate consciousness. Tyson Foods does not merely provide long-term strategy and guidance to Tyson Fresh. Tyson Fresh's entire purpose is to execute Tyson Foods' directives within the greater Tyson enterprise and to serve as an instrumentality of Tyson Foods. Throughout the Relevant Period, Tyson Foods exerted, and had the right to exert, control over Tyson Fresh. In this manner, Tyson Foods independently participated in the illegal enterprise with Tyson Fresh and, as a result, has sufficient knowledge, intent, and involvement in Defendants' conspiracy to be found liable under the Sherman Act with Tyson Fresh as a single enterprise.

E. Co-Conspirators.

103. Unknown persons, firms, corporations, and/or other entities not named as Defendants participated as co-conspirators with Defendants and performed acts and made statements in furtherance of Defendants' conspiracy. Defendants are jointly and severally liable for the acts of their co- conspirators, regardless of whether Plaintiffs formally name such co-conspirators as Defendants.

F. Reciprocal Agency of Defendants and Co-Conspirators.

104. Each Defendant and co-conspirator acted by or through its officers, directors, agents, employees, and/or representatives while actively engaged in the management, direction, control, and/or transaction of the entity's business and/or affairs.

105. Each Defendant and co-conspirator acted as the agent or joint venturer of the other Defendants and co-conspirators with respect to the acts, violations, and common course of conduct Plaintiffs allege.

INDUSTRY BACKGROUND

106. The United States is the largest producer of beef in the world, primarily "high quality, grain-fed beef for domestic and export use."[1] The United States also has the "world's largest fed-cattle industry because most of its cattle are grain fed." *Id.*

107. The market for fed cattle in the United States is substatial. In 2017 alone, for example, 25.8 million fed cattle were slaughtered and processed into beef products—which accounted for 80% of the 32.2 million commercial cattle slaughtered across the U.S. (The remaining volume is composed of slaughter cows (female cattle that have birthed a calf) and bulls, whose meat is typically used for lesser quality beef products, such as hamburger patties.).

108. The size of cattle herds in the United States is influenced by what is known as the "cattle cycle," which refers to "cyclical increases and decreases in the cattle herd over time that arise because biological constraints prevent producers from instantly responding to price." The cattle cycle is typically determined by the "combined effects of cattle prices; the time needed to breed, birth, and raise cattle to market weight; and climactic conditions." For example, cattle farmers will slowly increase or reduce their herds if cattle prices are expected to be high or low, respectively. While cattle cycles typically last for eight to twelve years (the longest among meat animals), "the effects of persistent dry conditions on pastures and harvested forage supplies can shorten or extend cycles."

109. Production of cattle raised for beef takes considerable time and investment. The cattle production cycle, running from birth to slaughter, typically ranges between 15 to 24 months, and is the longest of all animals typically raised for meat. Fed cattle progress through three

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[1] *See* the "Cattle & Beef" section of the USDA website (hereafter "USDA Cattle & Beef"), available at https://www.ers.usda.gov/topics/animal-products/cattle-beef/; "IBISWorld Industry Report 11211 – Beef Cattle Production in the US," IBISWorld, December 2018 (hereafter "IBIS Cattle Production Report") at 15.

interrelated sectors prior to slaughter: cow/calf; stocking and background; and feedlots. Calves are first raised by their mothers for six to ten months. When they weigh about 500 pounds, the calves are weaned and sold to the stocker-yearling sector where they eat a diet of forage, wheat pasture, and sileage. When a steer or heifer reaches 600–800 pounds, it is sold to a feedlot where it eats corn and protein supplements in addition to roughage.

110. Once cattle reach 950–1,300 pounds, they are sold as fed cattle to beef-packers. Defendants and other beef producers then slaughter and process the cattle into edible boxed beef and smaller case-ready consumer cuts. A steer weighing 1,000 pounds typically yields about 450 pounds of edible beef.

111. Cattle are sold to beef processors through two channels. About 70 percent of cattle are sold through supply contracts (known as captive-cattle agreements) with feedlots or, to a lesser extent, ranching operations. The rest of the cattle are sold on the spot market, which is typically the benchmark for prices under the captive-cattle agreements. Because Defendants ordinarily have a steady supply of cattle through captive-cattle agreements, they are not forced to buy in the spot market. This affords Defendants the power to suppress the price of cattle purchased in the spot market, which, in turn, depresses the prices of captive-cattle agreements.

112. In the final stage of the farm to market journey, Defendants and other meatpackers and distributors sell the beef to businesses, including Plaintiffs and other wholesalers, retailers, food service companies, grocery chains, restaurants, and institutions.

113. Tyson Fresh, JBS USA/Swift/Packerland, CMS, and National Beef each conduct daily meetings, typically from their head office, attended by representatives of their respective cattle procurement, plant operations, scheduling, beef sales, and risk management teams, among others, to make decisions regarding their respective cattle and beef operations. Among other

matters, the attendees at these meetings discuss the number of cattle their fed cattle business will procure, the terms on which they will be bought, plant scheduling (including slaughter rates) across each of their slaughter facilities, and beef sales strategy.

114. As the cost of fed cattle constitutes the majority of their cost of production, Defendants' profitability is driven by the "meat margin," which is the spread between the price packers pay for fed cattle and the price they charge for beef. The meat margin is very sensitive to changes in industry aggregate slaughter levels, and Tyson Fresh, Swift/Packerland, CMS, and National Beef can, through cooperation, have increased it. As noted by the U.S. DOJ, "all else being equal, when the meat packing industry reduces production levels, feedlots and cattle producers are paid less for fed cattle because fewer fed cattle are demanded and customers pay more for [beef] because less is available for purchase. Because the supply of fed cattle and demand for [beef] are relatively insensitive to short-term changes in price, even small changes in industry production levels can significantly affect packer profits." *See U.S. v. JBS*; No. 08-cv-5992 (N.D. Ill.) (ECF No. 48) ("Amended Complaint") at ¶¶ 26-27.

115. As a result of these sensitivities, Tyson Fresh, Swift, Packerland, CMS, and National Beef, on behalf of their parent companies, Tyson Foods, JBS S.A., JBS USA, and Cargill Inc., can (and did) improve their profitability by coordinating their respective slaughter levels at or below the prevailing supply of slaughter-weight fed cattle.

DEFENDANTS' ANTITRUST VIOLATIONS

116. By the beginning of 2015, Defendants were forced to confront shrinking profit margins on their beef sales. The two largest Defendants, Tyson Foods and JBS S.A., reported the slumping profitability of their beef operations on their respective earnings calls.

117. For example, on a November 7, 2014, earnings call, Tyson Foods reported a quarterly operating margin that was less than half the margin enjoyed by its poultry division.

Similarly, on a November 13, 2014, earnings call, JBS S.A. announced its beef segment was badly underperforming; it's quarterly margin was only about a third of its pork segment margin.

118. But rather than act independently in their individual business interests to attempt to restore profitability, these (and other), Defendants agreed to collectively reduce and manage their respective slaughter volumes made available to the downstream market, including to Plaintiffs. The resulting beef shortage ushered in a new era of supra-competitive prices paid by Plaintiffs and other direct purchasers.

I. Direct Evidence of Defendants' Conspiracy.

119. Recently-unsealed documents reveal direct evidence of Defendants' conspiracy, as witnessed by a former employee of Defendant Swift, knowns as "Witness 1." What follows is based on those and other recently unsealed public documents.

120. Based on conversations with James Hooker, head of fabrication at Swift's Cactus, Texas plant, Witness 1 stated that each Defendant expressly agreed to periodically reduce their respective purchase and slaughter volumes, resulting in wholesale beef prices above competitive levels, which resulted in artificially-inflated beef prices paid by Plaintiffs.

121. During his decade-long employment, including several years coinciding with the Relevant Period, Witness 1 was a head quality assurance officer with primary responsibility for the plant's kill floor, hotboxes, and coolers. The kill floor is where cattle are slaughtered and dressed, *i.e.*, head, hide, and internal organs removed. The carcasses are then moved to the hotboxes to cool down before being stored in the coolers prior to fabrication where they are broken down into smaller cuts.

122. Witness 1 learned of Defendants' collusive purchase and slaughter reduction agreement from Mr. Hooker. Mr. Hooker was the head of fabrication at Swift's Cactus, Texas

plant and, as explained below, was in a position to know (and knew) about Defendants' unlawful agreement.

123. Witness 1 regularly spoke with Mr. Hooker before starting his shift to learn the slaughter and fabrication numbers for that day and the upcoming days. These numbers affected how Witness 1 and his team would execute their responsibilities, including the placement of his team, arrangement of hotbox and cooler space, the number of carcasses they would process through the hotbox and coolers that day, and interactions with USDA inspectors

124. In addition to the fabrication plan, Mr. Hooker, like Witness 1, also needed to understand the number of cattle scheduled to be slaughtered each day. Among other matters, if the kill volume was lower but the price of beef remained favorable, the fabrication floor would continue to process carcasses at typical rates. However, when kill volumes were reduced and the price of beef was unfavorable, Mr. Hooker may order the carcasses to spend longer in the hot boxes and coolers before being fabricated into beef cuts to improve grading performance. In this circumstance, Witness 1 and his team would allow more space between each carcass in the hotboxes.

125. But if the kill volume was higher, Mr. Hooker increased the number of carcasses fabricated. To ensure there was sufficient space in the hotboxes and coolers, Witness 1 spaced the carcasses closer together when filling the hotboxes. The number of carcasses expected to be put into the hotboxes also dictated the amount of air and water Witness 1 and his team used to ensure proper cooling speeds.

126. In sum, it was essential for both Mr. Hooker and Witness 1 to know the plant's planned slaughter figures to coordinate and perform their core job duties. Witness 1 reported having had a "decent" working relationship with Mr. Hooker.

II. Mr. Hooker was Well Positioned to Know About Defendants' Unlawful Agreement.

127. On information and belief, Mr. Hooker continues to work at Swift's Cactus, Texas plant, where he has worked for over fifteen years, including a short stint as head of slaughter operations. Witness 1 reports that before working for Swift in the early 2000s, Mr. Hooker worked at Tyson Fresh's Amarillo, Texas slaughter plant where he was also responsible for beef fabrication.

128. As a fabrication manager for Swift, Mr. Hooker reported directly both to Cactus's General Manager, Manny Guerrero, and directly to the beef production department of JBS USA/Swift/Packerland's head office in Greeley, Colorado. Mr. Guerrero worked for CMS for approximately seventeen years prior to his move to JBS's Cactus, Texas plant. He was Plant Manager for CMS's Fresno, CA plant prior to his departure in early 2012 for JBS.

129. As head of fabrication, Mr. Hooker had to be informed regarding cattle buying/scheduling, cattle slaughter, and beef selling aspects of JBS USA/Swift/Packerland's fed cattle business. In doing so, he interacted with personnel across JBS USA/Swift/Packerland. In addition to his direct reports, Mr. Hooker also spoke directly to other managers within the JBS corporate office about plant operations, including scheduled slaughter and fabrication volumes and fabrication priorities.

130. For example, during the Relevant Period, Mr. Hooker regularly spoke directly to Mr. Sergio Sampaio Nogueira, Head of Operations and Executive Vice President of Plant Operations for JBS's fed cattle business when Mr. Nogueira visited the Cactus, Texas plant. Witness 1 understands that Mr. Hooker also spoke to Mr. Nogueira at other times. Mr. Hooker's contact with senior management confirms that JBS USA/Swift/Packerland senior executives maintained direct connections with plant-level managers, like Mr. Hooker, during the Relevant Period.

131. Mr. Nogueira was installed by Wesley Batista, JBS S.A.'s CEO, and considered Mr. Batista's "right hand man" regarding JBS's U.S. beef operations. Mr. Nogueria had primary responsibility for Swift's fed cattle plant scheduling and/or operations during the Relevant Period.

132. Wesley Batista, on the other hand, is one of the sons of JBS S.A. founder Jose Batista Sobrinho. Wesley Batista and his brother, Joesley Batista, took control of JBS S.A. in the early 2000s, prior to JBS' acquisition of Swift and Pilgrim's Pride. Wesley Batista is the former JBS S.A. CEO who directed JBS' takeover of Swift. He remained in that role, and as a director and senior executive of JBS USA, Swift and Packerland, until he was implicated in a 2017 bribery and corruption scandal in Brazil. He was ousted as CEO and spent time in prison.

133. Mr. Hooker also was responsible for the Cactus, Texas plant in the absence of Mr. Guerrero and the Plant Engineer, along with Ryan Wagnon, Head of Slaughter Operations. When acting as the Cactus, Texas plant General Manager, Mr. Hooker worked closely with fed beef executives from across JBS's head office. As such, Mr. Hooker regularly spoke to, and had a close working relationship with, highly placed executives at JBS.

134. In addition to having general corporate information about JBS, Mr. Hooker had information regarding the other Defendants. Mr. Hooker regularly told Witness 1 that he was in contact with his former colleagues at Tyson Fresh's Amarillo, Texas plant, including his replacement there. Mr. Hooker also told Witness 1 that he had friends and former colleagues at other Defendants' plants with whom he stayed in touch. Mr. Hooker often provided Witness 1 with detailed information regarding the current and future operations of Tyson Fresh, CMS, and National Beef's nearby packing plants.

III. Witness 1 Learns of Defendants' Unlawful Agreement.

135. Witness 1 reports having multiple discussions with Mr. Hooker during which Mr. Hooker explained that Defendants reduced their purchase and slaughter volume to reduce fed cattle

prices when Defendants viewed fed cattle prices as being or becoming "too high" for their liking. During one such conversation in 2015, Mr. Hooker specifically admitted that Defendants had an "agreement" to reduce their purchase and slaughter volumes in response to what they perceived to be high cattle prices.

136. In fact, Witness 1 reports that he was in Mr. Hooker's office when Mr. Hooker received an angry phone call from his immediate supervisor who worked in JBS USA/Swift/Packerland's central office in Greeley, Colorado. After the call concluded, Witness 1 reports that he asked Mr. Hooker how "many are we [Swift, Cactus] cutting [*i.e.*, fabricating]?" Witness 1 reports that Mr. Hooker replied the "cut" was going to be steady that day, but that the "kills are getting cut back, [because the] price is getting too high" (or words to that effect).

137. Witness 1 further reports that there was typically a lag between commencement of a slaughter reduction and the reduction of fabrication activities. Among other reasons, this phenomenon reflected the fact that a slaughter plant's fabrication team had to continue processing the carcasses already hanging in the coolers.

138. Witness 1 also recalls asking Mr. Hooker whether the competitor plants of the Swift Cactus, Texas plant were also cutting back their kill. Witness 1 reports that Mr. Hooker answered Witness 1's question as follows: "Yes, they are. We have had that agreement that we don't kill while prices are up for a while." (or words to that effect).

139. Witness 1 is certain that Mr. Hooker intended to convey the fact that all Defendants were reducing their slaughter volumes by agreement, and not simply commenting that one or some of the Defendants had independently decided to do so.

140. Witness 1 stated that Swift's Cactus, Texas plant had a 5,500–6,000 head per day slaughtering capacity and might drop its kill level to around 4,800–5,200 head per day when

implementing Defendants' unlawful agreement. When Swift bought and slaughtered fewer cattle, consequences included running its slaughter plants at reduced hours, operating the plants at lower "chain speeds," and/or scheduling maintenance shutdowns.

141. Witness 1 recalls management at Swift's Cactus, Texas plant, including Messrs. Guerrero and Wagnon, pretextually telling staff during such periods of reduced slaughter during the Relevant Period that kill levels were being reduced in response to fed cattle prices. As further described below, Defendants coordinated and agreed to refrain from expanding their slaughtering and processing capacity, thereby further restricting supply.

IV. The Available Data Corroborates Witness 1's Account.

142. Public reports and data confirm that Defendants reduced and rationed their slaughter volumes during the Relevant Period, resulting in supra-competitive beef prices. Defendants also managed their respective slaughter volumes throughout the Relevant Period in relative lockstep to ensure the beef supply remained lower than the corresponding increasing demand. Defendants did so despite cattle being readily available and their margins increasing substantially.

143. The slaughter reductions took place at various points throughout the Relevant Period. Defendants collectively moderated their slaughter volume during the second and third quarters of most years in a successful effort to expand their margins across several months, thereby also forestalling both the onset, and minimizing the effect of, the increase in slaughter volume that historically occurs annually in the autumn.

144. Defendants' joint slaughter management was not a reaction to changes in beef demand, which, as admitted by Tyson Fresh's head of procurement in 2018, had been "off the charts." *See* Tyson Fresh Meats: What the Consumer Demands - John Gerber, VP, Cattle Procurement, Tyson Foods; Kevin Hueser, VP, Beef Pricing, Tyson Foods, 2018 NIAA Antibiotic

Symposium: New Science & Technology Tools for Antibiotic Stewardship, November 13-15, 2018, Overland Park, KS, USA, https://www.youtube.com/watch?v=qCip3 WBcqzo.

145. Nor did any Defendant break from the agreement and buy more cattle to capture greater market share—despite all of them posting profit margins clearly demonstrating that no Defendant was running at or near its marginal cost of production. From the end of the first quarter of 2015 through the end of the Relevant Period, Defendants posted record per head net margins. Even excluding 2019 and 2020, when Defendants' margins skyrocket in the aftermath of the Holcomb plant fire and COVID disruption (discussed below), Defendants' average per head margins across the Relevant Period for the first, second, third and fourth quarters vastly exceeded their pre-Relevant Period.

146. Tyson Fresh, Swift/Packerland, and National Beef dramatically reduced their slaughter across 2015, while Cargill held its slaughter volumes steady following its 2014 cuts. These artificial reductions worked to cause the dramatic decline in fed cattle prices starting in 2015 and continuing throughout the Relevant Period, while beef prices stabilized or increased.

147. And while the quarterly reporting period obscures certain shorter reductions described below, it confirms the remarkable extent to which Defendants' quarter-to-quarter slaughter changes moved in lockstep with each other. This parallelism is consistent with, and the product of, an agreement to jointly manage and reduce slaughter levels below a competitive level.

148. But what's startling is the deep nature of the production cuts in 2015 and 2016 when comparing the same quarter to historic production (2012-2014). In 2015, the production decreased in the year overall and each quarter. For 2016, the production decreased overall and for three of four quarters. Tyson Fresh's, Swift/Packerland, CMS,' and National Beef's production was down comparing an average of 2012-2014.

149. Defendants' strategy was immediately successful, with lower slaughter volumes and lower beef output resulting in artificially high beef prices, despite cash cattle prices falling. Defendants' meat margins expanded rapidly as a result.

150. Moreover, Defendants' conduct stands apart from independent packers' who increased their annual slaughter volume in 2015 by 7.8% year-on-year.

151. And, though Defendants gradually increased their slaughter volumes over the rest of the Relevant Period, their rates of increase lagged far behind those of other producers.

152. But in every year during the Relevant Period, Defendants slaughtered fewer cattle than they did before the Relevant Period. And though Defendants gradually increased their slaughter volumes year-on-year during the Relevant Period, their rates of increase lagged far behind other producers' rates. *See Cattle Buyers Weekly, "Top 30 Beef Packers" Annual Reports*, 2008-2019, http://www. cattlebuyersweekly.com/users/rankings/index.php; *2018 Meat & Poultry Facts*, 47th Ed., NORTH AMERICAN MEAT INSTITUTE (2019) at 11. (National Beef acquired Iowa Premium in June 2019, adding 300,000 head to its annual fed cattle slaughter volume. Absent that acquisition, its 2019 slaughter volume was flat compared with 2018. At the same time, independent packers' collective slaughter volume rose by approximately 100,000 head (net of the Iowa Premium acquisition)).

153. Each Defendant also slaughtered significantly less cattle in 2015 than their pre-Relevant Period average, and then maintained artificially low slaughter levels throughout the remainder of the Relevant Period. That Defendants slowly raised their slaughter levels as the availability of fed cattle increased during the Relevant Period only reinforces the likelihood of a collective agreement to manage slaughter levels after their initial cut. Fully five years later, none of the Defendants have returned to their pre-2015 slaughter levels despite record profitability,

while independent packers' slaughter has increased nearly 50% against their pre-Relevant Period average, and 25% against their 2015 levels. The result of such action gave Defendants the ability to manage collective demand such that it never outpaced supply, ensuring the supply of beef stayed below demand.

V. Defendants Slash Production in 2015.

154. As evidenced by publicly available data, the impact of the conspiracy in 2015 was sudden and dramatic. Each Defendant cut its annual cattle slaughter volumes during the Relevant Period by an average of about 11.3% compared to the pre-Relevant Period (2007-2014). In sharp contrast, other meatpackers increased their cumulative annual slaughter volumes during the same period by an average of 41.2%.

155. Data breaking out slaughter volumes for each year of the Relevant Period highlight Defendants' extreme reductions in 2015, though other beef producers maintained or increased their volumes that year. For example, despite a slight uptick in the final quarter of 2015, Tyson Fresh's overall 2015 slaughter volume decreased by 4% as compared with 2014, Swift/Packerland by 17%, and National Beef by 6%. CMS's 2015 production was flat compared with the prior year but 11.3% below historic levels. All this occurred during a sustained recovery in the broader economy as the U.S. population grew steadily and beef demand was high.

156. In the first quarter of 2015, Tyson Fresh's, Swift/Packerland's, and National Beef's year-on-year slaughter was down by 1.8%, 11.2%, and 8.6%, respectively. CMS's quarterly slaughter volume was down against a 2012-2014 average and its first quarter 2015 slaughter volume, like that of its co-conspirators, decreased compared to its fourth quarter 2014 volume.

157. These declines were reflected in Defendants' public reporting. Tyson's May 4, 2015 Form 10-Q noted that its "sales volume decreased [in the quarter ending March 28, 2015, year-on-year] due to a reduction in live cattle processed." Jefferies Financial Group, Inc.

("Jefferies"), National Beef's then majority shareholder, noted in its May 8, 2015 Form 10-Q that National Beef's revenues decreased year-on-year for the first quarter "primarily to lower sales volume, as fewer cattle were processed." *See* Jefferies 10-Q (May 8, 2015) at 57, http://ir.jefferies.com/reports-filings/sec-filings/secfilingsdetails.

158. JBS S.A.'s earnings presentation for the first quarter of 2015 noted a 1.1% year-on-year decline in the "number of animals processed" by its JBS USA beef unit. *See* JBS S.A., 1Q 2015 Results (May 13, 2015) at 15, https://mzfilemanager.s3.amazonaws.com/_earnings_release.pdf. (JBS USA Beef segment also encompasses JBS S.A.'s much smaller Australian and Canadian beef businesses and Australian sheep operations. Presentation also noted a 1.1% decline in cattle processing (both fed and non-fed) across its U.S., Australian and Canadian beef businesses. JBS USA's fed cattle to non-fed cattle slaughter ratio throughout the Relevant Period was 80% fed, 20% non-fed.).

159. Expanding on their cuts, Tyson Fresh, Swift/Packerland, CMS, and National Beef extended their joint slaughter reduction during the second quarter and into the third quarter of 2015. Across the second quarter, Tyson Fresh's, Swift/Packerland's, and National Beef's year-on-year slaughter decreased by approximately 5.4%, 12.8%, and 6.2%, respectively. CMS continued to hold to its low 2014 slaughter volume, posting an essentially flat year-on-year growth of 1.8% in the second quarter, and -12.7% against its 2012-2014 average second quarter production.

160. This reduction in cattle processing was also reflected in Tyson Foods', JBS S.A.'s, and Jefferies" (National Beef's) financial reporting for the second quarter of 2015. *See, e.g.*, Tyson Foods Form 10-Q, filed August 2, 2015, at 38; Tyson Foods Form 10-K, filed November 23, 2015, at 29 (noting reduction in sales revenue in FY 2015 as against FY 2014 due to lower cattle processing); JBS S.A., 2Q 2015 Results (August 13, 2015) at 15, (noting 0.9% decline in cattle

processing (both fed and non- fed) across its US, Australian and Canadian beef businesses); Jefferies Form 10-Q, filed August 5, 2015 at 52 (noting revenues for three and six month 2015 periods decreased year-on-year "primarily due to lower sales volume, as fewer cattle were processed."); Jefferies Form 10-Q, filed November 5, 2015, at 53 (noting the same in relation to 3Q 2015 and first three quarters of 2015).

161. During the remainder of 2015, Defendants continued to restrain their slaughter levels and curtail their purchases of cash cattle even after it became clear that slaughter-ready cattle had been "backed up." *See* Cassandra Fish, *Kills Too Small for Too Long*, THE BEEF (Sep. 8, 2015), https://www.thebeefread.com/2015/09/08/ kills-too-small-for-too-long/.

VI. Defendants Continued to Artificially Limit Supply During 2016.

162. By "ration[ing] their new purchases [of cattle]" and running shorter 32-hour weeks, Defendants, in early January 2016, dampened rising cattle prices and extended the rally in beef prices. Cassandra Fish, *Global Sell Off Smacks Cattle*, THE BEEF (Jan. 4, 2016), https://www.thebeefread.com/2016/01/04/global-sell-off-smacks-cattle/. Defendants then further inflated beef prices by sustaining low kills across February and March. Cassandra Fish, *Yet More Consolidation*, THE BEEF (Jan. 6, 2016), https://www.thebeefread.com /2016/ 01/06/yet-more-consolidation/.

163. Tyson Fresh, Swift/Packerland, CMS, and National Beef reduced their slaughter volumes in the first quarter of 2016: Tyson Fresh (-0.7%), CMS (-3.3%), Swift/Packerland (-16.3%), and National Beef (-4.4%). Defendants also slaughtered fewer cattle than their average first quarter volume compared to 2012-2014: Tyson Fresh (-4.5%), Swift/Packerland (- 21.7%), CMS (-9.3%), and National Beef (-14.9%).

164. As a result, beef prices continued to skyrocket into March 2016 despite significantly lower than expected cattle prices. Defendants posted average weekly margins of approximately

$63 per head, which, at that time, was one of their "best Q1 in history" and well above their pre-Relevant Period first quarter average of $0 per head. Cassandra Fish, *This Week's Cash Trade*, THE BEEF (Mar. 22, 2016), https://www.thebeefread.com/2016/03/22/sell-off-accelerates/.

165. In the second and third quarters of 2016, each Defendant's kill volume remained below their 2012 to 2014 averages.

166. Despite an increase in the availability of fed cattle, except for Cargill, each Defendant's annual slaughter volume in 2016 remained below their 2014 levels (Tyson Fresh (-6%) and Swift/Packerland (-6%)) or flat (National Beef). *See* 2018 Meat & Poultry Facts, 47th Ed., NORTH AMERICAN MEAT INSTITUTE (2019) at 11. Cargill's 2016 slaughter remaine 3.7% below its 2012-2014 average.

167. In the third and fourth quarters of 2016, Defendants realized average per head margins on their fed cattle purchases and sales of $123 and $153 per head, respectively. Not only were these margins significantly above pre-Relevant Period averages ($25 and $16 per head, respectively), they also exceeded the Defendants' most profitable third and fourth quarters in modern times by about $30 and $100 per head, respectively. It was against Defendants unilateral self interest not to buy and slaughter more cattle..

VII. After Historic Cuts, Defendants Continued to Restrain Processing, Resulting in Higher Beef Prices in 2017 and 2018.

168. During 2017, Defendants worked to ensure that any increase in their collective slaughter volumes did not outpace the growth in cattle availability and beef demand. Tyson, Swift/Packerland, CMS, and National Beef reduced their slaughter volumes in lockstep during the first quarter of 2017, before raising them together during the second quarter. And while cattle prices increased from $119/cwt at the beginning of February 2017 to a high of $144/cwt in first

week of May 2017 (like pre-Relevant Period spring highs), Defendants responded by reducing their processing. .

169. As in 2016, Defendants enjoyed substantial profits across 2017, posting then record per-head margins in the second and third quarters ($128 and $147 per head, respectively). Indeed, their average per head margins for the first and fourth quarters, $42 and $88 per head, respectively, stood second only to the profits for those quarters which they generated in 2016. And again, each Defendant refused to increase production to expand their market share despite the obvious profit potential. Instead, they kept their production in lockstep with one another, coordinating purchasing to ensure the continued suppression of cattle prices and a corresponding increase in beef prices.

170. Defendants' scheme continued into 2018. Each Defendant told the market that as a result of plant closures, they had insufficient capacity to slaughter the supposed "wall of cattle" due to reach slaughter-weight in the spring and summer of 2018. Cassandra Fish, *Still Green!?!*, THE BEEF (Mar. 27, 2018), https://www.thebeefread.com/2018/03/27/still-green/ ("The [packers'] mechanical [slaughter] capacity exceeds needs [across Q2 2018]. The limitation perception is linked to labor. The perception of there being a limitation has created fear and inspired some cattle feeders to "get in line" by selling [cattle] out-front [*i.e.*, on captive supply agreements].").

171. Defendants then backed off their respective kill schedules during the first quarter of 2018. Cassandra Fish, THE BEEF (Apr. 2, 2018), https://www.thebeefread.com/2018/04/02/futures-trade-both-sides-cash-poisedto-trade-lower/. As Ms. Fish reported, "Looking back at March's fed slaughter rate, it underperformed expectations ... Packers appear to have responded to the tight supply of market-ready cattle in the north by keeping the kill constrained and margins profitable and stable." *Id.* The slaughter reduction occurred despite record strong beef demand and Defendants' under-utilized capacity.

172. As a result of their commitment to coordinate the available cattle amongst themselves, across 2017 and 2018, Tyson Fresh's, Swift/Packerland's, CMS,' and National Beef's annual slaughter volumes remained 5.4-7.2%, 10.2%, 9.1% and 12.0-12.8% below their pre-Relevant Period averages, respectively. By contrast, independent packers' slaughter volumes across 2017 and 2018 increased 46.5% and 56.1%, respectively, on their collective pre-Relevant Period averages.

VIII. In 2019 and 2020, Defendants Continued Parallel Slaughter, Which Was Against Their Independent Self-Interest.

173. Going into 2019, beef demand remained "terrific," encouraging packers to run plants to meet customers' demand. Cassandra Fish, *How About That*, THE BEEF (Feb. 11, 2019), https://www.thebeefread.com/2019/02/11/how-about-that-3/ ("Rather obviously, beef demand is terrific. Even in February, notoriously a slow beef demand month. Packer margins are record wide for February."). In ordinary times, absent a conspiracy, Defendants competed to secure as much cattle as possible to supply beef customers.

174. Instead, Defendants continued to work together to constrain and limit the increase in cattle prices that market conditions warranted. In the first quarter of 2019, each Defendant reduced its slaughter volume, posting similar quarter-on-quarter declines: Tyson Fresh (-2.4%), National Beef (-4.0%), CMS (-6.6%), and Swift/Packerland (- 7.4%). Defendants maintained comparably lighter slaughter volumes across the first three months of 2019, ensuring that their collective demand did not exceed the available supply. These supply restraints included taking downtime or reducing the number of hours the plant operates. Defendants continued to constrain their weekly kill volumes and declined to increase production to meet rising demand, thereby artificially inflating the price of beef. *See, e.g.*, Cassandra Fish, *And the Beat Goes On*, THE BEEF (Feb. 14, 2019), https://www.thebeefread.com/2019/02/14/and-the-beat-goes-on-2/.

175. The resulting impact of Defendants' slaughter restraint at the beginning of 2019 and their continued adherence to a common pricing strategy was an increase in beef prices—despite the fact that prices for cattle continued to decline, to an apparent bottom of about $109-110/cwt in the end of June. This left cattle producers facing an average $106 per head loss, against Defendants' estimated per head profit of $257. *Sterling Beef Profit Tracker: week ending June 21, 2019*, STERLING MARKETING, INC. (June 26, 2019), https://www.drovers.com/news/industry/profit-tracker-feeding- losses-reach triple-digits.

176. Despite robust beef demand, Defendants' restrained production resulted in higher beef prices on a year-on-year basis, despite the fact fed cattle prices had declined. Ms. Fish reported beef prices were "sizzling" despite most cattle producers losing money. Cassandra Fish, *Packers Press and Cash Softens*, THE BEEF (August 9, 2019), https://www.thebeefread.com /2019/08/09/packers-press-and-cash-softens/.

177. A slight $2-3/cwt rise in prices allowed cattle producers to realize a small per head profit of about $24 by the week ending August 9, 2020, against the Defendants' profit of $192 per head.

178. Notwithstanding the predicted cash cattle strength across August, a chance fire at Tyson's Holcomb, Kansas slaughter and processing plant on August 9, 2019, provided an opportunity for Defendants to cause cattle prices to trend lower, sending cattle producers back into the red. Tyson closed the Holcomb plant indefinitely after the fire. *Over 3,800 workers at Tyson Foods beef plant in Kansas out of work after fire*, REUTERS (Aug. 11, 2019, 1:30 PM), https://www.reuters.com/article/us-tyson-foods-fire/over-3800-workers-at-tyson -foods- beef-plant-in-kansas-out-of-work-after-fire.

179. However, following the Holcomb plant fire, Tyson Fresh, Swift/Packerland, CMS, and National Beef slashed their fed cattle bids and increased their beef prices. These actions caused a $5/cwt decrease in fed cattle prices and a $14/cwt rise in wholesale beef prices the following trading week. *See Sterling Beef Profit Tracker: week ending August 16, 2019*, STERLING MARKETING, INC. (August 20, 2019), https://cdn.farmjournal.com/. Live cattle future's contracts were also negatively impacted, with the market responding with two limit-down trading days on September 12 and 13, 2019.

180. This saw Defendants' per head margins rise from $191 to $358 in the week ending August 16. The following week, Defendants' margins continued to expand, with the spread between fed cattle prices and beef values extending to a then-record high of $67.17/cwt., $39.51/cwt above the average spread for the same week across 2016-2018.

181. Defendants blamed the loss of the Holcomb plant's 5,500-6,000 head per day slaughter capacity for these price changes. In a competitive market and with record profits, each Defendant would want to increase its purchases of cattle and increase its slaughter numbers to take advantage of the high prices and take market share from the industry leader Tyson.

182. Instead, in the month following the Holcomb plant fire, each Defendant decreased its production. The parallel and coordinated decrease in production cannot be explained by legitimate reasons, but instead, demonstrates Defendants' commitment to maintain high margins by keeping cattle slaughter restricted. Their purchase and kill reductions in the aftermath of the Holcomb plant fire ensured Defendants' collective supply remained constrained, giving them the power to increase beef prices while paying less for cattle.

183. Tyson Fresh, Swift/Packerland, CMS, and National Beef consequently reaped record high margins in the weeks that followed the Holcomb plant fire by causing a decrease in

fed cattle prices and increasing beef prices in parallel. As cattle prices bottomed out in the week ending September 13, 2019, the spread between Defendants' and Cattle Ranchers' per head margins exceeded $600, with packers making over $400 per head while producers sustained $200 per head losses. *Sterling Beef Profit Tracker: week ending September 13, 2019*, STERLING MARKETING, INC. (September 18, 2019), https://cdn.farmjournal.com/s3fspublic/inlinefiles/Beef%20Tracker%2081919.pdf.

IX. Defendants Idled and Closed Plants and Refrained from Expanding Processing Capacity.

184. Defendants' conspiracy also entailed a strategy to restrict beef supplies. Defendants agreed to permanently close processing facilities without replacing most of the lost capacity, these include:

- On September 11, 2015, Cargill Inc. announced it would sell its Plainview, Texas plant that it idled in February 2013.
- In August 2015, Tyson Food decreased the industry's slaughter capacity by another 2,000 cattle per day by shuttering its Denison, Iowa plant.

By idling these plants, Defendants slashed the industry's annual slaughter capacity by some two million cattle per year.

185. While overall industry slaughter capacity increased slightly between 2015 and 2018, this nominal gain was primarily not due to any Defendant. Instead, it was attributable to other beef-processing companies. For example, One World Beef Packing restored about 2,000 cattle per day by reopening the Brawley, California plant closed by National Beef in 2014.

186. In sharp contrast to Defendants' behavior, other beef processing companies acted consistently with their competitive interests by increasing their capacity and output in response to increased demand for beef. But their increased efforts to supply the downstream market with beef had little effect on the prices due to their nominal market share. Defendants' market dominance

meant that any minor incursions by the few remaining independent processors increased availability only in isolated pockets, but had negligible effect on restoring supply (and thereby reducing beef prices) in most locations.

X. Defendants Signaled Their Conspiracy and Encouraged Each Other to Maintain it.

187. One method Defendants used to coordinate, promote, and monitor their conspiracy (evident now only with the benefit of hindsight afforded by the disclosure of other conspiratorial evidence) was to signal and discuss with each other their activities and plans during earnings calls. Here are some examples:

- During Tyson Food's Q4 2015 earnings call, CEO Smith further acknowledged that "You've got relatively low cattle supply, you've got too much -- well, I should not say too much, that's probably not the right way to say it, but you've got excess industry capacity and that limits our ability to drive margins above the 1.5% to 3%, we think."

- On Tyson Foods's August 3, 2015, Q3 earnings call, CEO Smith admitted Tyson was underutilizing its plants, despite hurting its margins. when discussing Tyson's decreased purchases over the preceding quarter, noting "[b]ecause we run for margin and not for market share, we're not willing to overpay for cattle and we've had to cut back on our hours at our plants resulting in inefficiencies and added costs. In the short-term, we are negatively impacted, but markets will equilibrate and conditions are expected to improve for the long term." He also admitted that "industry capacity utilization [was] probably in the low 70s." In response to a question regarding the consequent impact of Tyson's underutilization of its plant capacity Mr. Smith elaborated: "In terms of quantifying the impact, we know when we're running 34s and 36s a week in our plants that that does cost us. It raises the cost in our plant, makes us a lot less efficient, so it does have a cost to us. I don't know that I can quantify that right off the bat, but it does impact margin."

- On its November 12, 2015, Q3 earnings call, JBS USA's CEO Andre Nogueira de Souza publicly praised Defendants' efforts to reduce industrywide slaughter capacity through plant closures, remarking that "the reduction that we saw in the cutbacks of production in U.S. that was with the shutdown of nine plants the last two years reduced the cattle. (inaudible) cost us [$3.5 million]. I think that will be a very good position balancing the industry in 2016, 2017 and 2018."

- On a May 2016 JBS S.A. Q1 earnings call, JBS USA's CEO Mr. Nogueira de Souza described the company's supply strategy: "So I don't see any imbalance in this near future, even cattle is coming back and we're going to see a little bit more production of beef this year and next year. It's still way, way below how it was few years ago and we'll be balancing at this side because a lot of plant was shut but it's too way below our historical production level."

- On its November 2016, Q4 earnings call, Tyson Foods acknowledged the widening of the meat margin: "The dynamic is that the livestock prices have not come – they've come down faster than the retail prices have, which has allowed us to make the margins that we have right now in both beef …."

XI. Parallel Reductions in Cash Cattle Purchases and the Anticompetitive Queuing Convention.

188. Defendants procure their fed cattle in three ways: on the cash cattle trade market (the industry's version of the spot market), through formula or forward contracts, and, for Swift/Packerland and CMS, relying on their own cattle. Through these contracts, cattle producers agree to deliver their cattle once they have reached slaughter weight at a price to be determined at the time of delivery.

189. To increase their beef margins, Defendants jointly managed their purchases of domestic fed cash cattle in parallel below the available supply, including by reducing the number and volume of purchases. Defendants took advantage of the supply glut of fed cattle and lower cash cattle prices and increased their beef margins. They expanded their beef margins by refusing to pass-on the savings from the reduced cattle prices to beef purchasers—including Plaintiffs—which would normally happen in a competitive market. Instead, beef prices remained high while prices paid to cattle producers decreased, indicating a collusive agreement among Defendants.

190. In addition to Defendants' reduced cash cattle purchases, each employed an antiquated "queuing convention" throughout the Relevant Period, which served to limit cattle producers' ability to generate price competition for their cattle.

191. The queuing convention, which operated predominately in relation to those cattle sold in the cash market, works as follows: once a producer receives a bid from a packer, the producer may either accept the bid or pass on it, but may not "shop" that bid to other packers,

inducing competition into the bidding process. If another packer offers the same bid as the original bidding packer, the cattle producer must give the original packer the right of first refusal.

192. The obligation to give a right of first refusal was collectively imposed by Defendants under threat of boycott. Defendants have adhered to, and enforced, this convention for decades, including across the Relevant Period, treating it as a mandatory industry custom.

193. According to recently-unsealed public documents, one former feedlot manager, referred to as "Witness 2," confirmed that the field buyers from Tyson Fresh (Brian Alsup), Swift (Levi Canales, and prior to him, Chad Miller), CMS (Rick Vogel, and prior to him, Steve Brown), and National Beef (Richard Duffy) who visited his feedlot enforced strict adherence to the queuing convention under threat of retaliation. Each of these field buyers individually told Witness 2 about the importance of his feedlot complying with the convention, and that they would not "come by" anymore should he break with it.

194. Witness 2 further reported that when he took over management of the feedlot in 2012, it would only receive bids from National Beef and CMS. When he subsequently spoke to the field buyers from Tyson Fresh (Mr. Alsup) and Swift (Mr. Miller) in the fall of 2012, they told him that they had stopped visiting the feedlot because Witness 2's predecessor had broken with the queuing convention by "shopping" their bids. Witness 2 reports that the Tyson Fresh and Swift field buyers re-commenced visiting the feedlot after he confirmed his commitment to follow the convention.

195. Witness 2 also heard from the Defendants' field buyers and other industry participants about other cattle producers being "blackballed" for breaking with the queuing convention. In those circumstances, Witness 2 understood the Defendant that was "on the cattle" would be tipped off regarding the cattle producer's "breach" of the convention by the field buyer

contacted by the cattle producer while shopping the Defendant's bid or would pressure the producer for details of its sale.

196. As evidenced by their expanding beef margins, Defendants collectively refused to pass-on any savings from the anticompetitive conduct with respect to the cattle producers to Plaintiffs, instead doubling-down keeping the ill-gotten gains for themselves. This manipulation of the cash market affected prices in the entire market for purchases of fed cattle and the consequent deflation of fed cattle prices.

EFFECTS OF DEFENDANTS' ANTITRUST VIOLATIONS

I. Defendants' Conspiracy Increased the Spread Between Cattle and Beef Prices.

197. Droughts from 2011 through 2013 caused fed cattle prices to steadily increase. Predictably, wholesale prices of beef moved in tandem, maintaining a constant relationship (or margin) between the two. As a result, Defendants' profits on average were trimmed to margins of only 1%-3%.

198. The DOJ has recognized that when the beef market is functioning competitively, a strong relationship exists between the cattle supply and beef prices paid by direct purchasers:

> [A]ll else being equal, when the meat packing industry reduces production levels, feedlots and cattle producers are paid less for fed cattle because fewer fed cattle are demanded and customers pay more for [beef] because less is available for purchase. Because the supply of fed cattle and demand for [beef] are relatively insensitive to short-term changes in price, even small changes in industry production levels can significantly affect packer profits.

See U.S. v. JBS, Amended Complaint, ¶¶ 26-27.

199. Thus, in a competitive market, lower wholesale beef prices naturally follow lower cattle prices. Once the conspiracy took hold, however, the spread between cattle and beef prices grew significantly. Defendants' reduced purchases of cattle caused cattle prices to slump, while

Defendants charged direct purchasers for beef elevated prices that would not have existed in the market but for the artificial supply restraints.

200. According to USDA Economic Research Service data, the average spread between the average farm value of cattle and wholesale value of beef was substantially higher from January 2015 through 2021 than during the preceding five years. From 2010 to 2014, the average farm-to-wholesale spread was about $34. But from 2015 to 2018, the average spread was about $54—a 59% increase. The spread continued to balloon, by 2020 reaching about $71, a 109% increase from the pre-Relevant Period average.

201. Defendants' ability to decrease beef production while maintaining inflated beef prices during the Relevant Period provides compelling circumstantial evidence of their conspiracy. In a beef market free from collusion, if a competitor reduces its purchase of cattle, other competitors quickly pick up the slack to boost their purchases and sales and increase their market shares. That did not happen here as to Defendants.

II. Tyson Foods, JBS S.A., and JBS USA Falsely Claimed Their Record Profits Were Due to Market Prescience, Not Supply Constraints.

202. Throughout 2017 and 2018, on earnings conference calls, executives from Tyson Foods and JBS S.A. frequently attributed their historically high profits to their ability to accurately foresee the volume of cattle entering the beef supply chain in the upcoming years:

- On a Q3 2017 earnings call on August 7, 2017, Tyson Foods reported a beef-business operating margin of 3.7% for the third quarter, emphasizing its confidence in the beef business going forward: "With ample supplies of cattle, we see very good conditions for our beef business as far out as 2020, as we enter the early stages of a multiyear expansion cycle. Absent a shock to the system such as a drought or an import ban, our beef business is well- positioned for profitable, long-term growth." Tyson Foods also acknowledged it was considering raising its previously forecasted 1.5%–3% normalized operating margins. But despite an ample supply of cattle and high demand for beef, Defendants did not increase cattle purchases or cattle slaughter.

- On a May 7, 2018 Q2 2018 earnings call, Tyson Foods announced forecasted beef operating margins of 6% for the year—at least twice its normalized operating margin range of 1.5%– 3%. Tyson Foods claimed the huge increase was attributable to "those cattle on feed reports and knowing that the supplies in our region are exceptionally good."

- On a May 15, 2018 Q1 2018 earnings call, JBS S.A. reported an EBITDA margin of 6.1% for the quarter and forecasted that the company would enjoy record beef margins for the next two quarters. JBS USA's CEO and President, Andre Nogueira, emphasized that its performance was not based on "taking share from anyone."

- On an August 6, 2018 Q3 2018 earnings call, Tyson Foods reported a beef operating margin of 8% for the quarter. Tyson Foods stated that it had an "optimistic outlook" because "we have good visibility into 2021 . . . that's good because we do see the number of animals that are out there."

- On an August 15, 2019 Q2 2018 earnings call, JBS S.A. reported a beef EBITDA margin of 10.2% for the quarter. JBS USA's CEO and President, Andre Nogueira, stated that it was "moving the overall margin in beef [to] a different level that was in the past." JBS USA added that it benefitted from shutting several plants in the previous five years, and could not see how U.S. beef could "be less profitable in 2019 compare[d with] how it is going to perform in 2018."

- On a November 13, 2018 Q4 2018 earnings call, Tyson Foods reported record beef operating margins of 8.9% for the quarter and 6.7% for the year, stating that it expected similar results in the following years thanks to visibility into cattle supply: "As we look at 2019, 2020, even in 2021 we frankly we don't see a lot of change. The supply appears to be relatively stable. We have a good sense of what that looks like just due to the calf crop that gives us good visibility for at least a couple of years."

ADDITIONAL PLUS FACTORS EVIDENCE THE REASONABLE INFERENCE OF DEFENDANTS' CONSPIRACY

203. The beef meatpacking industry bears all the characteristics of a highly cartelized market: (1) producer concentration, (2) high barriers to entry, (3) commodity product, (4) inelastic demand, (5) opportunities to collude, (6) reduction of imports, (7) market share stability, and (8) production and capacity cuts in the face of increasing beef demand. These characteristics supported Defendants' collusion to constrain the number of cattle slaughtered which reduced and restrained the volume of processed beef sold, raised and fixed the wholesale price of beef, and maximized their profit margins.

I. The Beef Market Is Highly Concentrated.

204. Market concentration facilitates collusion. Conspiracies are easier to organize and sustain when only a few firms control a large share of the market, such as Defendants' control of the beef market. Practicalities, such as coordinating cartel meetings and exchanging information, are much simpler with a small number of players.

205. A high degree of Defendants' control simplifies coordination because little outside competitive presence exists to undermine the cartel, and they can more easily monitor each others' actions related to supply and pricing.

206. In a highly concentrated market, higher, long-term profits secured by the cartel's artificially elevated prices outweigh transitory gains in profits and market share that beef producers might achieved by undercutting the cartel price.

207. The beef industry experienced significant consolidation leading up to and during the Relevant Period. In 2001, Tyson Foods purchased IBP, Inc., the nation's largest beef packer. In 2002, Cargill, Inc. purchased Taylor Packing Co. And in 2007 and 2008, JBS USA acquired Swift & Co. and Smithfield Beef Group, Inc., the third and fifth largest U.S. beef packers.

208. Through these purchases, Defendants collectively controlled about 81%–85% of the cattle slaughter market throughout the Relevant Period, while the next largest meatpacker had only a 2%–3% market share. Defendants' control of the market enabled the conspiracy to launch in 2015 and prosper.

II. The U.S. Beef Market Has High Barriers to Entry.

209. Barriers to entry are obstacles that prevent new competitors from easily entering a market. They restrict competition in a market, making it easier for incumbents to collude.

210. A collusive arrangement that raises product prices above competitive levels would, under basic economic principles, attract new entrants seeking to benefit from the profits reaped

from supra-competitive pricing. But where significant barriers to entry exist, new entrants are less likely to enter the market. Barriers to entry, therefore, help facilitate the formation and maintenance of a cartel.

211. Barriers to entry kept prospective competitors out of the beef packing industry. The construction of a large packing plant requires an investment of at least $250 million and normally takes two years or longer to obtain the necessary permits and plan, design, and build the facility. New market entrants also must comply with numerous regulations, recruit and train a large workforce, and develop and execute a successful marketing plan.

212. These barriers have caused new entrants to file for bankruptcy shortly after attempting to enter the beef market, including substantial enterprises, such as Northern Beef Packers, LP, and Sam Kane Beef Processing, LLC. Northern Beef Packers LP filed Chapter 11 in July 2013, ceasing operations before selling its assets in December 2013. *See* "Northern Beef Packers sold to White Oak for $44.3 million," *The National Provisioner* (Dec. 9, 2013). Sam Kane Beef Processing filed Chapter 11 in January 2019 and was acquired by STX Beef Co. in February 2019. *See* "Kane Beef plant sale closes, new owner pledges to restart operations," *Daily Adviser* (Mar. 1, 2019). Relative insulation from the threat of new competitors has thus enabled Defendants to maintain their conspiracy.

III. Beef Is a Commodity Product.

213. A commodity is a basic item or good used in commerce that is interchangeable with other goods of the same type. Commodities are most often used as inputs in the production of other goods or services.

214. Beef is a commodity. For example, Tyson and Cargill beef roasts are virtually indistinguishable with nearly identical nutritional content. The USDA recognizes beef as a

commodity and posts daily beef prices. Options and futures for the cattle from which beef is produced are traded as commodities on the Chicago Mercantile Exchange.

215. Markets for commodity products are susceptible to collusion. Demand for a commodity depends primarily, if not exclusively, on price as opposed to other attributes, such as product quality or customer service. As a result, cartel members can more easily monitor compliance and detect defectors.

216. Any observed price discrepancies for commodities are more likely to expose cheating because they cannot be readily attributed to other factors, such as special product features, quality, reliability and durability, or other terms of a transaction.

IV. The Demand for Beef is Inelastic.

217. Price elasticity describes the sensitivity of suppliers or consumers to changes in the price of a good or service. Demand is inelastic if an increase in the price of a product results in only a small decline, if any, in the quantity sold of that product.

218. Under inelastic demand conditions, customers have nowhere to turn for an alternative, cheaper product of similar quality, and continue to purchase despite a price increase.

219. For a cartel to profit from raising prices above competitive levels, demand must be relatively inelastic at competitive prices; otherwise, increased prices will result in declining revenues and profits as customers purchase substitute products or decline to buy altogether.

220. Inelastic demand is a market characteristic facilitating collusion, allowing producers to raise their prices without triggering customer substitution and lost sales revenue.

221. Beef demand is relatively insensitive to price changes. According to a recent study of beef demand, "since beef has an inelastic demand, industry total revenue increases when prices rise as there comparatively is a limited reduction in volume purchased." *See* Glynn Tonsor, Jason Lusk, Ted Schroeder, *Assessing Beef Demand Determinants* (Jan. 18, 2018) at 7-9,

https://www.beefboard.org/wp-content/uploads/2019/06/Assessing-BeefDemand-Determinants FullReport.pdf.

222. The same study concluded that the relative impact of pork and chicken prices on beef demand is economically small. Defendants' supra-competitive prices to its direct purchasers do not significantly reduce beef sales or lead purchasers to seek protein from other meat sources.

V. Defendants Took Advantage of Multiple Opportunities to Collude.

223. Defendants are members of industry trade associations and forums and regularly attend industry events, including the events discussed below. These events provide opportunities to exchange pricing, supply, and other competitively sensitive information.

224. For example, the National Cattlemen's Beef Association ("NCBA") holds an annual convention, CattleCon, which includes a summer conference, legislative conference, and regional meetings. *See, e.g.*, *NCBA Allied Industry Membership*, NATIONAL CATTLEMEN'S BEEF ASSOCIATION (2019), https://convention.ncba.org/. The NCBA Product Council, which includes Defendants' representatives and representatives from other packers, meets quarterly for the invitation-only Beef Executive Forum. Two of Defendants' executives, former CMS/Cargill Vice President of Cattle Procurement, Bill Thoni, and former Tyson Senior Vice President of Beef Margin Management and Vice President of Boxed Beef Pricing, Kevin Hueser, were officers, board members, or designated participants of the NCBA during the Relevant Period. Defendants also participated in meetings of the Beef Checkoff program run by the Federation of State Beef Councils, held contemporaneously with the NCBA summer and winter meetings.

225. The U.S. Meat Export Federation ("USMEF") is another example of a trade association where Defendants regularly met. The USMEF develops export opportunities for U.S. protein producers and holds both spring and fall conferences and monthly international trade shows. *See Events: Meetings*, U.S. MEAT EXPORT FEDERATION (2019), http://www.usmef.org/

events/bodmeetings/; *Events: Trade Show Calendar*, U.S. MEAT EXPORT FEDERATION (2019), http://www. usmef.org/events/trade-shows/.

226. USMEF leadership includes Defendants' current and former officers and employees. For example, former CMS/Cargill Vice President of International Sales, Pat Binger, was an officer, board member, or formally designated participant of the USMEF; former Tyson Foods Senior Vice President of International Sales, Roel Andriessen, served as the Chair, Vice Chair, and on the Executive Committee of the USMEF; former Tyson Foods Senior Vice President of International Sales and Vice President of International Sales, Robert Shuey, was a formal participant of the USMEF; National Beef International President and former Vice President of International Sales, Peter Michalski, served on the Export Committee of the USMEF; and former National Beef NBP International Sales President, Mark Domanski, served on the Export Committee of the USMEF. In November 2017, Tyson's Roel Andriessen and CMS's Pat Binger attended the USMEF Strategic Planning Conference in Tucson, Arizona. *See USMEF Members Examine Challenges ahead, Elect New Officer Team*, U.S. MEAT EXPORT FEDERATION (Nov. 3, 2017), https://www.usmef.org /news-statistics/member-news- archive/ usmefmembers-examine-challenges-ahead-elect-new-officer-team/.

227. Defendants also were among the founding members of the Global and U.S. Roundtables for Sustainable Beef and continue to be members. Defendants participate in its annual meetings each spring; Defendants Cargill and JBS have leadership positions in some of the working groups.

228. During the Relevant Period, Defendants also met at multiple meetings, conferences, conventions, and expositions sponsored by the North American Meat Institute ("NAMI") and its predecessor, the American Meat Institute. NAMI is a national trade association representing

companies that process 95% of the red meat in the U.S. market. *See About NAMI*, https://www.meatinstitute.org/index.php?ht=d/sp/i/204/pid/204; Events, NORTH AMERICAN MEAT INSTITUTE (2019), https://www.meatinstitute.org/index.php?ht=d/sp/i/10422/pid/10422. Defendants' executives and employees also participated and held leadership positions in the NAMI. For example, CMS President of Business Operations & Supply Chain and former Cargill Beef President, John Keating, was an officer, board member, or formally designated participant of NAMI; former Tyson Foods CEO, Group President of Fresh Meats & International, and COO, Noel White, served on the NAMI Executive Committee; former Tyson Foods CEO and President, Thomas Hayes, also served on the NAMI Executive Committee; National Beef President and CEO, Timothy M. Klein, served on the Executive Committee of NAMI; and JBS USA CEO, Andre Nogueira, served on the NAMI Board of Directors.

229. NAMI and the Food Industry Association host an annual Meat Conference, which various executives and employees of Defendants attend every year. In 2017, National Beef's Timothy Klein, Tyson Vice President of Boxed Beef Pricing, Don Kieffer, JBS USA's Andre Nogueira, and CMS Vice President of Sales, John Jay, amongst other Defendant executives, attended the Meat Conference. See *2017 Annual Meat Conference: Registered Attendees*, FOOD INDUSTRY ASSOCIATION (Dec. 9, 2020), https://www.fmi.org/forms/meeting/MeetingRosterPublic/viewRoster?meetingId.

230. In 2018, National Beef's Timothy Klein, JBS USA's Andre Nogueira, Cargill Vice President of Retail Beef Business, Elizabeth Gutschenritter, and Tyson's Don Kieffer were listed as attendees at the NAMI Conference. *See 2018 Annual Meat Conference Attendee List as of 2.9.2018*, MEAT CONFERENCE (Feb. 9, 2018), http://meatconference.com/sites/default/files/books/2018%20AMC%20Attendee%20List. pdf.

231. In 2019, JBS USA's Andre Nogueira, Tyson's Noel White, National Beef's Timothy Klein, and Cargill's Elizabeth Gutschenritter were listed as attendees. *See Meat Conference 2019 Attendee List (as of 2/27*), MEAT CONFERENCE (Feb. 27, 2019), http://meatconference.com/sites/default/files/books/2019-AMC-Attendee-List.pdf.

232. In 2020, Tyson's Noel White and National Beef's Timothy Klein again signed up to attend the Meat Conference along with various other Cargill and JBS executives and employees. *See 2020 Annual Meat Conference: Registered Attendees*, FOOD INDUS. ASS'N (Dec. 9, 2020), https://www.fmi.org/forms/meeting/MeetingRosterPublic/viewRoster?meetingId.

233. Until April 2017, NAMI sponsored an annual Meat Industry Management Conference, which offered topics, such as economics and general business. That conference was then replaced by an annual Meat Industry Summit, which has since sponsored "networking opportunities and social events" including a golf tournament, receptions, an "Issues, Answers, Actions Breakfast," the annual NAMI board meeting, and what one publication described as "closed door committee meetings to discuss policies and association business." The 2017 summit included a presentation by John Nalivka of Sterling Marketing, entitled "Economic Outlook for the Red Meat Industry," described as an "analysis of supply and demand and price forecasts" to "cover all aspects of the supply chain, and help your business prepare for the years ahead."

234. The beef industry's Annual Meat Conference described the event as "a complete education and networking experience," and provided another opportunity for Defendants to confer. Many of Defendants' high-level executives have been attending this conference for years. The list of registered attendees in 2012, for example, included eight executives from JBS, Tyson Foods's then-CEO Donnie Smith, and twelve other Tyson executives.

235. In 2018, Defendants' executives and employees also attended "AgCon," a joint conference from the Commodity Futures Trading Commission and the Center for Risk Management Education and Research at Kansas State University. *See Inaugural AgCon brings business, government together to discuss ag futures markets*, KANSAS STATE UNIVERSITY (Mar. 8, 2018), https://www.ksre.kstate.edu/news/stories/2018/03/AgCon2018.html). CMS' Bill Thoni and Tyson's Kevin Hueser were listed as attendees of the 2018 AgCon along with other of Defendants' executives and employees, including Tyson Fresh's Vice President of Sourcing & Risk Management, Randall Chambers, Tyson Fresh's Vice President of Cattle Procurement, John Gerber, National Beef Vice President of Cattle Procurement, Chad Barker, National Beef Vice President of Procurement and Risk Management, Phil Groetken, and JBS USA Head of Risk Management, Marco Sampaio. See *2018 AgCon Attendees*, KANSAS STATE UNIVERSITY (Mar. 28, 2018), https://www.kstate.edu/riskmanagement/documents/Ag_Con_2018_ Attendees_ Mar30. pdf.

236. Tyson, JBS, and Cargill executives also had ample opportunities to meet privately, particularly at the beginning of the conspiracy, due to JBS's acquisition of Tyson and Cargill's Mexican and Brazilian chicken and U.S. pork operations, respectively. JBS S.A.'s purchase of Tyson's Brazilian and Mexican chicken operations was announced on July 28, 2014 and closed on December 1, 2014 and June 29, 2015, respectively (*see* JBS Foods Int'l B.V., Registration Statement (Form F-1) at 112 (Dec. 5, 2016), https://www.sec.gov/Archives/edgar/ data/1691004/000119312516785274/d304020df1.htm), while its purchase of Cargill's U.S. pork operations was announced on July 1, 2015 and closed on October 30, 2015. Cargill, Tyson, and JBS executives with responsibilities relating to beef and cattle, such as then-Tyson CEO and President, Donnie Smith, JBS USA CEO, Andre Nogueira, and then-Cargill Senior Vice President,

Todd Hall, were all involved in the acquisition discussions. JBS S.A.'s CEO Wesley Batista stated in July 2015 that its "courtship" with Cargill in relation to its U.S. pork operations "started years ago," with discussions intensifying at the beginning of 2015—which coincided with the start of the Relevant Period. *See* Luciana Magalhaes, *With Cargill Purchase, Brazil's JBS Poised to Become No. 2 Pork Producer in U.S.*, WALL STREET JOURNAL (July 2, 2015, 3:18 PM), https://www.wsj.com/articles/with-cargill-purchase-brazils-jbs-poised-to-become-no-2-porkproducer-in-u-s-1435864508.

237. These events afford Defendants' top executives and other employees with frequent opportunities to discuss beef pricing, production, and other proprietary information in an informal setting, as well as monitor compliance with their conspiracy.

VI. Defendants Exacerbated Their Supply Restraints by Continuing to Reduce Imports.

238. Defendants did not offset their slaughter reductions by importing more cattle into the U.S. Rather, imports continued decreasing in 2015 and throughout the Relevant Period.

239. Certain Defendants also shuttered international plants, thereby decreasing the supply of cattle available for import to the United States, which could otherwise have offset Defendants' conspiratorial reductions.

240. Defendants' reduced domestic slaughtering and cattle imports for slaughter combined to raise beef prices paid by Plaintiffs above competitive levels.

VII. Defendants' Market Share Stability is Indicative of a Conspiracy.

241. In a competitive market, market shares fluctuate as beef producers compete for and gain business from each other. Stable market shares over time can suggest anticompetitive behavior like that engaged in by Defendants.

242. Market-share stability in a commodity market strongly suggests operation of an effective cartel that has agreed not to compete. A marked decline in market-share volatility over time may suggest a conspiracy in a previously competitive market.

243. Available data show that Defendants' market shares, measured by wholesale beef sales, became more stable during the Relevant Period. The same is true for Defendants' market shares as measured by slaughter capacity.

244. Defendants did not do the things true competitors would do in a competitive market. They did not attempt to capture each other's market share or lower prices as their costs declined. Rather, they shared competitively sensitive confidential information.

245. As described above, Defendants reduced their output and capacity to produce beef for sale to Plaintiffs. In a competitive market, the reduction in output by one producer typically presents an opportunity for competitors to capture market share in the face of constant or increasing demand.

246. But instead, Defendants jointly reduced their output to limit beef supply, which increased beef prices. By acting together to advance their conspiracy, Defendants sacrificed potential individual gains via increased market share for larger collective gains for all by increased prices and profit—all at the expense of Plaintiffs.

VIII. Defendants Implemented Production Cuts Despite Surging Beef Demand.

247. Defendants' joint slaughter management was not a reaction to changes in beef demand. Tyson Fresh's Head of Cattle Procurement, John Gerber, admitted at a November 2018 industry conference:

> [The] [c]onsumer will pay more for beef, and have to pay more for beef because it is worth more. There is value out there in chicken and pork, but unless you have been living under a great big rock the last two years, you know that beef demand is off the charts. We have a lot of supply coming at us, but we have been able to hold

> the price at a pretty good level, because of beef demand, it's been really good, and I think it will stay good.

See Tyson Fresh Meats: What the Consumer Demands - John Gerber, VP, Cattle Procurement, Tyson Foods; Kevin Hueser, VP, Beef Pricing, Tyson Foods, from the *2018 NIAA Antibiotic Symposium: New Science & Technology Tools for Antibiotic Stewardship* (Nov. 13-15, 2018), https://www.youtube.com/watch?v= qCip3WBcqzo. Yet, no Defendant broke ranks and bought more cattle and increased production to capture this "off the charts" demand for beef.

248. By February 2019, beef demand was "terrific" and, in ordinary times, would encourage packers to compete to secure more cattle and run plants to meet customers' demand. *See* Cassandra Fish, *How About That*, THE BEEF (Feb. 11, 2019), https://www.thebeefread.com/2019/02/11/how-about-that-3/ ("Rather obviously, beef demand is terrific. Even in February, notoriously a slow beef demand month. Packer margins are record wide for February.").

249. This strong beef demand trend continued into the fall of 2019, where the "voraciousness of beef demand [surprised] pretty much everyone in the business." *See* Cassandra Fish, *Packers Press and Cash Softens*, THE BEEF (Aug. 9, 2019), https://www.thebeefread. com/2019/08/09/packers-press-and-cash-softens/. Beef demand remained strong during the Relevant Period and, in fact, steadily increased from its prior lows in the immediate pre-collusion period.

<u>THE BEEF INDUSTRY FACES GOVERNMENT INQUIRIES AND INVESTIGATIONS</u>

250. In August 2019, the USDA opened an investigation into the beef industry following the fire at Tyson's Holcomb, Kansas plant. The USDA took notice after the reduction in available supply simultaneously caused cattle prices to fall while beef prices increased.

251. On March 19, 2020, U.S. Senators Mike Rounds of South Dakota, Kevin Cramer and John Hoeven of North Dakota, and Steve Daines of Montana sent a letter to the DOJ urging

it to launch an investigation into price-fixing in the cattle market. The authors highlighted Defendants' harm to upstream producers and downstream consumers.

252. On a conference call reported in the press, Senator Rounds stated the request was for the DOJ "to definitively answer whether a packer oligarchy exists within the cattle market and inherently creates an anti-competitive marketplace that unfairly disadvantages the cattle producer and the consumer." Senator Rounds further commented, "These margins just don't make any sense. The reality is there is an inverse correlation between the producer's price and the consumer's price."

253. On April 8, 2020, Reuters reported that the USDA had extended its existing investigation to include a pricing dynamic like what was observed after the Holcomb plant fire—reduced prices paid to ranchers for cattle accompanied by a surge in retail beef prices—following announced production shortages associated with the nationwide COVID-19 outbreak.

254. On April 17, 2020, state level cattle production trade associations from 23 states signed a letter to Attorney General William Barr, requesting the DOJ to coordinate with the USDA and launch its own investigation into "fraudulent business practices within the meatpacking industry." Signatories included the Minnesota State Cattlemen's Association.

255. The letter described two extraordinary pricing episodes, identified by the USDA, following the Holcomb plant fire and during the COVID-19 outbreak. The state trade associations not only reported their own plight but also observed that: "The nature of previous and current concern in both situations is extreme market degradation to the producer segment quickly followed by sharp increases and unseasonable profitability to the packing segment through boxed beef prices."

256. With respect to the most recent alleged market manipulations, the letter further explained:

> We are now seeing that same type of price action [observed after the Holcomb fire] repeated— only in a more extreme manner and during a time of crisis that includes logistical stressors on the nation's food production and distribution system. Indeed, in the last analysis, Defendants' conduct portends more than mere profiteering. If left unchecked, it will remain a direct and gathering threat to the country's food security during the current crisis.

Id.

257. On May 5, 2020, eleven state attorneys general, including the Minnesota attorney general, signed a joint letter to Attorney General Barr, urging the DOJ to open a coordinated federal antitrust investigation into "anticompetitive practices by the meat packers in the cattle industry." This letter noted that: "Cattle ranchers . . . often struggle to survive. Consumers, moreover, do not realize the benefits from a competitive market."

258. On June 4, 2020, Bloomberg reported that the DOJ had served civil investigative demands on Tyson Foods, JBS S.A., Cargill, Inc., and National Beef in connection with an investigation into antitrust violations consistent with the requests made by the producer trade associations and state attorneys general.

ANTITRUST INJURY

259. The cattle market is an oligopsony consisting of Defendants, which purchase most of the cattle for slaughter and produce most of the beef sold in the wholesale market. When Defendants colluded to restrict supply, the market effectively became a oligopsony that left Plaintiffs with no choice but to accept whatever beef prices Defendants offered.

260. In a competitive market, the volume of cattle purchased by beef producers (such as Defendants) would equal the volume where supply matches the demand/marginal revenue product curve, and the price for such cattle would be the additional revenue cattle producers would receive.

261. When Defendants collaborated to restrict supply, they exercised their oligopsony power to compel Plaintiffs to accept the price Defendants offered, thus driving down the market price. In this manner, Defendants' oligopsony power enabled them to maximize their profit by purchasing fewer cattle at a lower price.

262. Further, because imported beef was not offsetting the shortages that Defendants created, the restricted supply of cattle caused a restricted supply of beef in the downstream market to direct purchasers like Plaintiffs.

263. From the standpoint of direct purchasers of commodity beef, including Plaintiffs, Defendants function as an oligopoly in control of most of the industry supply. When Defendants colluded to restrict supply, direct purchasers were forced to buy at prices dictated by Defendants acting in concert.

264. Because no other source offset the shortages, Defendants created the restricted supply of fed cattle, which, in turn, restricted the supply of beef in the downstream market to direct purchasers.

265. Because Defendants had and have accompanying downstream market power, they were able to maximize their profits by colluding to produce volumes based on their marginal revenue curve, instead of the market demand curve, which artificially increased the beef prices Plaintiffs paid.

266. Because Defendants did not fear competition from other meatpackers, their collusion had the dual effect of (i) artificially decreasing the price they paid for cattle, and (ii) artificially increasing the price they charged for their beef products.

267. Defendants' oligopsony power and anticompetitive conduct had the following effects, among others:

- Price competition in the beef market was restrained or eliminated;
- Prices for beef sold by Defendants, their divisions, subsidiaries, affiliates, and co-conspirators, and, in turn, other beef producers, were raised, maintained, and fixed at artificially high, noncompetitive levels throughout the United States;
- Direct purchasers of beef, including Plaintiffs, were deprived of free and open competition; and
- Direct purchasers, including Plaintiffs, paid artificially inflated beef prices.

268. The purpose of Defendants' and their co-conspirators' conduct was to raise, fix, and maintain the price of beef above a competitive level. As a direct and foreseeable result, Plaintiffs paid supra-competitive prices for beef during the Relevant Period. Defendants' violations of the Sherman Act caused Plaintiffs to suffer injury to their businesses or property of the type the antitrust laws were designed to punish and prevent.

DEFENDANTS FRAUDULENTLY CONCEALED THEIR CONSPIRACY

I. Defendants Concealed Plaintiffs' Cause of Action.

269. Throughout the Relevant Period, Defendants effectively, affirmatively, and fraudulently concealed their conspiracy from Plaintiffs.

270. Defendants used various means and methods to fraudulently conceal their conspiracy, including, but not limited to, secret meetings, surreptitious communications between Defendants by telephone or in person meetings to prevent the existence of written records, limiting any explicit reference to competitor pricing or supply-restraint communications in written documents, and communicating competitively sensitive data directly to each other.

271. As set forth above, Defendants engaged in secret behavior intended to advance their conspiracy. Defendants' conspiracy—based on behavior known only by them to be illegal at the time they engaged in such behavior—plausibly suggest Defendants engaged in a campaign of fraudulent concealment.

272. JBS and Tyson often falsely attributed their historically high profits to their ability to accurately foresee the volume of cattle entering the beef supply chain in upcoming years, yet their high profits had nothing to do with foresight, but instead, resulted from their collusion with each other as set forth above.

273. During the Relevant Period, Defendants concealed their illegal behavior from Plaintiffs by, *inter alia*:

- Communicating privately by telephone about their purchases and slaughter volumes, so they would not create written evidence of sharing this information, as well as relying on nonpublic forms of communication;
- Offering false or pretextual rationales for the low fed cattle prices;
- Providing pretextual justifications for their plant closures, slaughter reductions, and withdrawal from the cash cattle trade;
- Explicitly and implicitly representing that the fed cattle bids and contract terms offered to Plaintiffs were the product of honest competition and not a conspiracy;
- Misrepresenting that they complied with applicable laws and regulations, including antitrust laws; and
- Misrepresenting the nature of their agreements (and purported adherence to competitive safeguards) to government officials and the public.

274. During the Relevant Period, Defendants also lied about their compliance with antitrust laws, which lies at the heart of Plaintiffs' antitrust case; to wit:

- Tyson's Code of Conduct represents that "[w]e compete in the market with integrity and comply with competition laws [and w]e comply with the letter and spirit of competition laws (also referred to as "antitrust" laws) wherever we do business."
- JBS's 2014 Annual Report asserts that the company has clear policies "[t]o ensure ethical conduct and integrity in the management of its business," including a Manual of Ethical Conduct "that addresses issues related to violations, conflicts of interest, third-party contracts, employment practices, receiving gifts, decision making, anti-corruption practices, and other sensitive topics."
- Cargill stressed in its 2015 Corporate Responsibility report that "[w]e obey the law. Obeying the law is the foundation on which our reputation and Guiding Principles are built We conduct our business with integrity We compete vigorously, but do so fairly and ethically. We ... comply with the laws and regulations that support fair

competition and integrity in the marketplace." Cargill reaffirmed this commitment in subsequent Corporate Responsibility reports.

- National Beef's former majority shareholder, Jefferies Financial Group, acknowledged in its 2014 Annual Report that National Beef was "subject to extensive government regulation," including by the USDA.

275. Regarding Cargill, Inc.'s, JBS S.A.'s, and Tyson Foods's false or pretextual statements or issued false or pretextual data, Cargill, Inc. did so for the benefit of CMS, JBS S.A. did so for the benefit of JBS USA, Swift, and Packerland, and Tyson Foods did so for the benefit of Tyson Fresh because had Defendants not continually cloaked their conspiracy, the conspiracy would have been unable to operate.

276. In addition to Defendants having affirmatively concealed their conspiracy, it was inherently self-concealing because it depended on secrecy for its successful operation.

277. Defendants also lied about their plant closures, slaughter reductions, and withdrawal from the cash cattle trade as follows.

A. The Cargill Defendants.

278. As discussed above, the Cargill Defendants shared a unity of corporate interest and operated as part of a single enterprise to advance their conspiracy.

279. To facilitate Defendants' conspiracy, Cargill, Inc. made public statements offering pretextual explanations to cloak Defendants' unlawful activity. For example, Cargill, Inc. used its 2017 Annual Report to explain that "[r]enewed consumer demand for beef [produced] favorable market conditions in North America."

280. The following year, Cargill, Inc. proclaimed that its Animal and Nutrition & Protein segment's "strong performance" in 2018 was "fueled by rising domestic and export demand for North American beef," rather than through its price-fixing scheme, the revelation of which Cargill, Inc. understandably avoided.

281. Cargill, Inc. made these false public statements to obscure its role and participation in the conspiracy. Instead of disclosing that its "strong performance" stemmed from the conspiracy, its illegal behavior, and the resulting profits, Cargill, Inc. concocted fabricated business justifications, such as "favorable market conditions" and "rising domestic and export demand."

B. The JBS Defendants.

282. As discussed above, the JBS Defendants shared a unity of corporate interest and operated as part of a single enterprise to advance the conspiracy.

283. To facilitate the conspiracy, JBS USA made public statements to conceal Defendants' unlawful activity. For example, in November 2015, JBS USA CEO, Andre Nogueira, declared that "[c]attle price will go down" in the United States because "we are going to see more cattle available."

284. Similarly, in March 2016, JBS S.A.'s CEO, Wesley Mendonca Batista, stated that JBS would see "better margin[s]" due to an "increase in the herd in the U.S."

285. JBS executives made similar statements throughout 2016 and 2017 and into 2018, regularly claiming that JBS's strong financial performance in the United States was a result of "more cattle available in the U.S.," "cattle price[s being] back to the normal level," and "strong demand for beef." But such statements were false and misleading.

286. Instead of disclosing that its "improvement in EBITDA margin" was the result of illegal profits from the conspiracy, JBS offered false business justifications, such as "more cattle available in the U.S." and cattle prices returning "back to the normal level." JBS made all these false public statements to disguise its role and participation in the conspiracy.

C. National Beef.

287. To facilitate the conspiracy, National Beef, through its majority shareholders, Jefferies Financial Group Inc., and later, Marfrig Global Foods S.A. ("Marfrig"), used public statements to conceal Defendants' unlawful activity.

288. For example, in October 2015, Jefferies stated that the anticipated expansion of the cowherd "bodes well for [meatpacking industry] margins as it will lead to an increase in the number of fed cattle available for slaughter."

289. In October 2016, Jefferies explained that the "rebuilding of the domestic US cattle herd ha[d] dramatically affected the market for fed cattle" when justifying how, "[f]rom June 27, 2015 to June 25, 2016, the average market price per pound of fed cattle ha[d] fallen from $1.48 to $1.16."

290. Jefferies offered similar pretextual justifications throughout 2017 and 2018, such as "National Beef generated record results for [the last 12 months] on the back of a more balanced supply of cattle and robust end market demand," "an increased supply of cattle in 2017 has driven higher margins and greater capacity utilization versus 2016," "pre-tax income grew by $78.3 million, as increased cattle availability and strong demand for beef continued to support strong margins," and "because the peak in supply of fed cattle ready for slaughter lags the peak size of the beef cowherd, throughput should continue to increase for at least the next several years, supporting continued above-average packer margins."

291. These statements were made during Jefferies Financial Group Investor Day presentations in 2015, 2016, and 2017, at which National Beef's CEO and President, Tim Klein, was scheduled to speak on topics related to National Beef's performance.

292. Marfrig similarly offered false justifications for the low prices caused by the conspiracy after Marfrig acquired a controlling stake in National Beef.

293. For example, Marfrig reported in November 2018 that, "[i]n the United States, the cattle availability combined with stronger domestic and international demand has been supporting better margins."

294. In 2018, during a third-quarter company earnings call, Marfrig executives reiterated the preceding paragraph's point by claiming that "the U.S. beef industry has delivered record results" because of "an ample supply of cattle" and "strong demand in both the domestic and international markets." Although Marfrig declared that it had attained record results and better margins while reducing cattle slaughter volumes, it misrepresented that these results were due to "fewer weeks in the third quarter 2018 compared to the third quarter 2017."

295. National Beef CEO, Timothy M. Klein—referred to by Marfrig CEO, Eduardo de Oliveira Miron, as "CEO of [Marfrig's] North American Operations"— participated in the 2018 call.

296. Marfrig announced in the fourth quarter of 2018 that it attained a "[s]olid result from North America Operation, sustained by strong demand for beef protein and the higher cattle availability."

297. Jefferies and Marfrig made these pretextual public statements on behalf of National Beef—which, as alleged above, was the original source of the pretextual public statements—to obscure their role and participation in the conspiracy. Instead of disclosing that their record results and better margins stemmed from the illegal prices implemented by the conspiracy, Jefferies and Marfrig claimed these results were due to the ample supply of cattle, higher cattle availability, and strong demand.

D. The Tyson Defendants.

298. As discussed above, the Tyson Defendants shared a unity of corporate interest and operated as part of a single enterprise to advance the conspiracy.

299. To facilitate the conspiracy, Tyson Foods made public statements to conceal Defendants' unlawful activity. For example, Tyson Foods used its SEC filings from 2015 to 2018 to declare that it had "limited or no control" over the pricing and production of cattle because prices were "determined by constantly changing market forces of supply and demand."

300. As for the factors that influence the cost of cattle, Tyson identified "weather patterns throughout the world, outbreaks of disease, the global level of supply inventories and demand for grains and other feed ingredients, as well as agricultural and energy policies of domestic and foreign governments."

301. Tyson further stated that it "ceased operations at our Denison, Iowa plant" to "better align our overall production capacity with current cattle supplies." Tyson claimed that "[t]he beef segment earnings improved . . . due to more favorable market conditions associated with an increase in cattle supply which resulted in lower fed cattle costs."

302. Rather than truthfully disclosing that the conspiracy improved its earnings, Tyson Foods issued false business justifications, such as lower fed cattle costs and favorable market conditions. Tyson Foods made these misrepresentations to cover up its role and participation in the conspiracy.

303. There was no truth to Defendants' foregoing statements. Rather, Defendants made them to mislead Plaintiffs into believing they were acting legally because keeping Plaintiffs in the dark about the price-fixing conspiracy would allow Defendants to operate the conspiracy and profit from it.

II. Plaintiffs Were Unable to Discover the Existence of Defendants' Price-Fixing Conspiracy.

304. Plaintiffs had neither actual nor constructive knowledge of the facts constituting their claim for relief. Plaintiffs did not discover and could not have discovered through the exercise

of reasonable diligence, the existence of the conspiracy alleged herein until the filing of the cattle ranchers' class action, *In re Cattle Antitrust Litigation*, in this District on May 7, 2019. Defendants engaged in a secret conspiracy that did not reveal facts that would put Plaintiffs on inquiry notice that there was a conspiracy to fix beef prices. Throughout the relevant period, Defendants effectively, affirmatively, and fraudulently concealed their unlawful combination and conspiracy from Plaintiffs.

305. The combination and conspiracy alleged herein was fraudulently concealed by Defendants by various means and methods, including, but not limited to, secret meetings, surreptitious communications between Defendants by the use of the telephone or in-person meetings to prevent the existence of written records, and limiting any explicit reference to competitor pricing or supply restraint communications.

306. Plaintiffs learned about Witness 1, as early as April 7, 2019, upon the filing of cattle ranchers' complaint. Witness 1 offers direct evidence that the beef industry colluded to fix prices. Prior to the cattle ranchers' complaint and Witness 1's account therein, Plaintiffs did not know and could not have known about the conspiracy and did not have any facts that would have reasonably put them on inquiry notice regarding its existence.

307. Plaintiffs did not learn and could not have learned about the USDA and DOJ investigations at any time before March 12, 2020, when Secretary of Agriculture Sonny Perdue announced that the USDA had commenced an investigation into suspiciously high beef prices (as alleged above), and thus did not have any facts that would have reasonably put them on inquiry notice regarding the existence of the conspiracy.

308. Before Witness 1's account and the revelation of the government's investigations, no facts existed that could have or should have reasonably suggested or disclosed to Plaintiffs the possibility of price fixing in the beef industry.

309. Defendants' conspiracy, by its very nature, therefore, was self-concealing.

310. The beef industry is not exempt from antitrust regulation, and thus, before these recent events, Plaintiffs reasonably considered it to be competitive. Accordingly, a reasonable person under the circumstances would not have been alerted to begin investigating the legitimacy of Defendants' beef prices and conduct prior to these recent revelations.

III. Plaintiffs Exercised Due Diligence in Attempting to Discover Their Claim.

311. Plaintiffs could not have learned of Defendants' anticompetitive conduct until recently after public disclosures regarding Witness 1 and the existence of governmental investigations. Market conditions that Defendants ascribed to legal behavior did not put Plaintiffs on inquiry notice.

312. Defendants' concealment was successful—that is, because of their concealment, Plaintiffs were unable to discover the existence of their antitrust claim.

313. Because of Defendants' fraudulent concealment, Plaintiffs had insufficient information concerning Defendants' misconduct on which to base a complaint and could not have discovered Defendants' conspiracy earlier.

314. Defendants affirmatively made public statements giving false and misleading pretextual reasons for their record profits.

315. Because of Defendants' misrepresentations, and their success and precision in cloaking their illegal behavior, Plaintiffs lacked reasonable awareness of suspicious circumstances or storm warnings sufficient to trigger the duty to investigate.

316. A reasonable person would not have discovered the conspiracy through any of Defendants' statements. As such, the most reasonable time for Plaintiffs' duty to inquire did not arise until after Witness 1's revelations and the government's antitrust investigations were announced.

DEFENDANTS ENGAGED IN CONTINUING ANTITRUST VIOLATIONS

317. A continuing violation can operate in two ways. First, a continuing violation restarts the statute of limitations period each time Defendants commit an overt act. Second, a continuing violation can occur where, as here, Defendants' anticompetitive conduct causes a continuing harm to Plaintiffs.

I. Defendants Renewed their Conspiracy with New and Independent Acts.

318. During the Relevant Period, Defendants sold beef to Plaintiffs at artificially raised and fixed prices resulting from Defendants' continually renewed and adjusted price-fixing agreement. Defendants, acting collectively, had to continually renew and adjust their price-fixing agreement to account for ever-fluctuating economic and market conditions.

319. Defendants' meetings and misrepresentations were among the overt acts that commenced running a new statute of limitations because such meetings and misrepresentations advanced the objectives of their conspiracy. Defendants also committed new overt acts each time they took actions to implement their conspiracy, such as reducing and restraining the supply of processed beef and their actions regarding the purchase of fed cattle, which occurred at each auction, and their decisions to curtail production at their processing plants.

320. Defendants' overt acts, which were new acts continued throughout the Relevant Period. Each sale of beef by an Defendant at a supra-competitive price was a new overt act and an antitrust violation that injured Plaintiffs and started the statutory period running again.

321. Defendants' overt acts, including, but not limited to, those mentioned above, were new and independent acts that perpetuated their agreement and kept it current with market conditions; they were not merely reaffirmations of Defendants' previous acts. By constantly renewing and refining their agreement to reflect market conditions, Defendants inflicted new and accumulating injury, harm, and damages on Plaintiffs.

II. Defendants Inflicted New and Accumulating Injury on Plaintiffs.

322. Plaintiffs purchased beef directly from Defendants during the Relevant Period.

323. Each direct beef purchase by Plaintiffs from Defendants during the Relevant Period, the price of which resulted from Defendants' continually renewed and adjusted agreement, necessarily caused Plaintiffs to suffer new and accumulating injury, harm, and damages.

324. As the concept of a continuing violation applies to a conspiracy that brings about a series of unlawfully high-priced sales over several years, each direct sale of beef to Plaintiffs by Defendants starts the statutory period running again regardless of Plaintiffs' knowledge about the unlawful conspiracy at an earlier time. This means that each illegally priced direct sale of beef to Plaintiffs by Defendants created a new cause of action for purposes of the statute of limitations.

325. Defendants' conspiracy continued into the non-time-barred Relevant Period—that is, four years before the first cattle ranchers class action complaint was filed and alternatively four years before the filing of the first direct purchaser class action complaint.

326. As alleged throughout this complaint, Defendants' illegal conspiracy began in at least 2015 (if not earlier) and continued throughout the Relevant Period.

327. Plaintiffs further allege that Defendants constantly coordinated and communicated with each other beginning in 2015 and throughout the Relevant Period. The fact that they maintained such communications makes plausible the allegation that their conspiracy continued from 2015 through the Relevant Period. In this manner, Defendants' conspiracy continued when

their direct beef sales to Plaintiffs were made during the four years preceding the filing of the first related cattle ranchers class action complaint, and in the alternative, during the four years preceding the filing of the first direct purchaser class complaint.

328. Each of the above-referenced beef industry plus factors were present in 2015 and throughout the Relevant Period: high market concentration, commodity product, inelastic demand, high barriers to entry, and trade association meetings that occurred each year and provided Defendants with multiple opportunities to conspire.

329. Defendants' unlawful beef conspiracy was intended to and did inflict continuing injury, harm, and damages on Plaintiffs' businesses and property.

CLAIMS AND CAUSES OF ACTION

VIOLATION OF SECTION 1 OF THE SHERMAN ACT
15 U.S.C. § 1
(AGAINST ALL DEFENDANTS)

330. The preceding factual statements and allegations are incorporated by reference.

331. Beginning at least as early as 2015 and continuing through the Relevant Period, the exact dates presently unknown to Plaintiffs, Defendants and their co-conspirators entered and engaged in a continuing agreement, understanding, and conspiracy in unreasonable restraint of trade to artificially fix, raise, and stabilize the wholesale price for beef in the United States, thus creating anticompetitive effects in violation of Section 1 of the Sherman Act.

332. As set forth above, Defendants' acts in furtherance of their combination or conspiracy were authorized, ordered, or carried out by their officers, agents, employees, or representatives while actively engaged in the operation and management of Defendants' affairs.

333. As further set forth above, Defendants and their co-conspirators conspired to conceive and further their objects of the conspiracy, including, without limitation, the following acts, practices, and course of conduct, *inter alia*:

- Fixing, raising, and artificially inflating the wholesale price of beef; and
- collusively reducing the production of beef.

334. Defendants' unlawful combination and conspiracy had the following effects during the Relevant Period, among others:

- Price competition in the sale of beef in the United States was restrained, suppressed, and eliminated;
- Prices for beef sold by Defendants, their divisions, subsidiaries, and affiliates, and all their co-conspirators, were fixed, raised, stabilized, and maintained at artificially high, non-competitive levels throughout the United States; and
- Persons and entities that directly purchased beef from Defendants, their divisions, subsidiaries, affiliates, and co-conspirators, including Plaintiffs, were deprived of the benefits of free and open competition in the purchase of beef.

335. Defendants' anticompetitive acts had a direct, substantial, and foreseeable effect on interstate commerce by artificially raising and fixing beef prices throughout the United States because Defendants sell beef in every state. Their unlawful conspiratorial acts and combinations caused unreasonable restraints in the beef market during the Relevant Period.

336. Plaintiffs have been injured and may very well continue to be injured in their businesses and property by paying more for beef purchased directly from Defendants and their co-conspirators than they would have paid and/or will pay absent Defendants' unlawful conspiracy.

337. Defendants' unlawful contract, combination, understanding, agreement, and/or conspiracy is a per se violation of the federal antitrust laws, for which Plaintiffs are entitled to treble damages. Plaintiffs also are entitled to an injunction against Defendants to prevent and restrain further violations of the federal antitrust laws.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that Defendants be cited to appear and answer this action, and, upon final trial or hearing, judgment be entered that the above-described conspiracy and the acts engaged in by Defendants and their co-conspirators in furtherance thereof violated Section 1 of the Sherman Act, 15 U.S.C. § 1, and further, judgment be entered against Defendants awarding Plaintiffs:

(i) Three times the damages sustained by Plaintiffs as a direct and/or proximate result of Defendants' violations of Section 1 of the Sherman Act, including attorneys' fees, litigation expenses, and court costs pursuant to Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26;

(ii) Prejudgment and post-judgment interest at the highest legal rates; and

(iii) Such other and further relief the Court deems just and proper under the circumstances.

JURY TRIAL DEMANDED

Pursuant to FED. R. CIV. P. 38(b), Plaintiffs demand a trial by jury of all issues so triable.

Date: May 12, 2022

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