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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF OREGON
(Medford Division)

JEFF BOARDMAN, DENNIS RANKIN, ROBERT SEITZ, TODD L. WHALEY, LLOYD D. WHALEY, SOUTH BAY WILD, INC., MISS SARAH, LLC, and **MY FISHERIES, INC.,**

Plaintiffs,

v.

PACIFIC SEAFOOD GROUP, OCEAN GOLD HOLDING CO., INC., DULCICH, INC., FRANK DULCICH, PACIFIC SEAFOOD GROUP ACQUISITION COMPANY, INC., PACIFIC SEAFOOD WASHINGTON ACQUISITION CO., INC., BANDON PACIFIC, INC., BIO-OREGON PROTEIN, INC., PACIFIC CHOICE SEAFOOD COMPANY, PACIFIC COAST SEAFOODS COMPANY, PACIFIC GARIBALDI, INC., PACIFIC GOLD SEAFOOD COMPANY, PACIFIC PRIDE SEA FOOD COMPANY, PACIFIC SEA FOOD CO., PACIFIC SURIMI CO., INC., PACIFIC TUNA COMPANY, LLC, WASHINGTON CRAB PRODUCERS, INC., PACIFIC ALASKA SHELLFISH, INC., SEA LEVEL

Case No.:

COMPLAINT
(15 U.S.C. § 2)

SEAFOODS, LLC, ISLAND FISH CO., LLC, PACIFIC RESURRECTION BAY, PACIFIC CONQUEST, INC., CALAMARI, LLC, JO MARIE LLC, LESLIE LEE, LLC, MISS PACIFIC, LLC, PACIFIC FUTURE, LLC, PACIFIC GRUMPY J, LLC, PACIFIC HOOKER, LLC, PACIFIC HORIZON, LLC, PACIFIC KNIGHT, LLC, PRIVATEER LLC, SEA PRINCESS, LLC, TRIPLE STAR, LLC, PACIFIC FISHING, LLC, PACIFIC SEA FOOD OF ARIZONA, INC., STARFISH INVESTMENTS, INC., DULCICH SURIMI, LLC, BIO-OREGON PROPERTIES, LLC, PACIFIC GROUP TRANSPORT CO., PACIFIC MARKETING GROUP, INC., PACIFIC RUSSIA, INC., PACIFIC RUSSIA VENTURES, LLC, PACIFIC TUNA HOLDING COMPANY, INC., POWELL STREET MARKET LLC, PACIFIC FRESH SEA FOOD COMPANY, SEACLIFF SEAFOODS, INC., COPPER RIVER RESOURCE HOLDING CO., INC., PACIFIC COPPER RIVER ACQUISITION CO., INC., SEA LEVEL SEAFOODS ACQUISITION, INC., ISLAND COHO, LLC, S & S SEAFOOD CO., INC., PACIFIC SEAFOOD DISC, INC., DULCICH REALTY, LLC, DULCICH REALTY ACQUISITION, LLC, and DULCICH JET, LLC

Defendants.

Plaintiffs allege as follows:

INTRODUCTION

1. This is an action under the federal antitrust laws, specifically Section 2 of the Sherman Act, which prohibits conspiracies to restrain trade and monopolization in any segment of U.S. commerce.

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2. All defendants with the exception of Ocean Gold Holding Co., Inc. were parties to a class action lawsuit entitled *Whaley, et al. v. Pacific Seafood Group, et al.*, Case No. 1:10-cv-03057-PA, which was filed on June 21, 2010 and resolved by way of a comprehensive settlement agreement set out in a Stipulation and Resolution Agreement of Class Action Claims (Class Action Settlement Agreement) that was approved by U.S. District Court Judge Owen M. Panner in a Judgment and Order of Dismissal dated May 21, 2012. The Class Action Settlement Agreement became effective on June 21, 2012 and has a term of five years through June 20, 2017; however, this Court has discretion to extend the term of the Class Action Settlement Agreement for an additional five years "in the event conditions in the West Coast markets for trawl-caught groundfish, whiting and pink shrimp warrant."

3. One of the pro-competitive provisions in the Class Action Settlement Agreement provides that the exclusive marketing agreement between Pacific Seafood Group and Ocean Gold Seafoods, which grants to Pacific Seafood Group complete control over the sales and marketing of any seafood product produced by Ocean Gold Seafoods, would not be renewed at the end of its term in February 2016. Pacific Seafood Group's planned acquisition of complete control of Ocean Seafoods and its affiliates would violate this provision of the Class Action Settlement Agreement.

4. Despite its monopoly power positions in the West Coast markets for trawl-caught groundfish, Pacific whiting and Pacific coldwater shrimp, defendant Frank Dulcich and the 55 defendant entities that he controls doing business as the Pacific Seafood Group are attempting to acquire control of Ocean Gold Seafoods, Inc., the largest seafood processing plant on the West Coast, as well as its affiliated entities that include Ocean Protein, LLC, Ocean Cold, LLC and Ocean Gold Transport, Inc. The successful acquisition of Ocean Gold Seafoods, Inc. and its

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affiliates by Pacific Seafood Group will increase defendants' monopoly power in the West Coast markets for trawl-caught groundfish, Pacific whiting and Pacific coldwater shrimp in violation of the anti-monopoly provisions of Section 2 of the Sherman Act.

5. Upon information and belief, there are viable alternative purchasers of Ocean Gold Seafoods and its affiliates other than defendants. If Ocean Gold Seafoods and its affiliates are acquired by a seafood processor other than Pacific Seafood Group, competitive conditions in the West Coast markets for trawl-caught groundfish, Pacific whiting and Pacific coldwater shrimp will be substantially enhanced. This will benefit both West Coast fishermen and U.S. consumers.

JURISDICTION AND VENUE

6. Pursuant to Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26, this action is for injunctive relief for violation of Section 2 of the Sherman Act, 15 U.S.C. § 2. This Court has jurisdiction pursuant to 15 U.S.C. § 15 and 28 U.S.C. §§ 1331 and 1337(a). Venue is proper in this District under 15 U.S.C. § 22 and 28 U.S.C. §§ 1391(b), (c). Frank Dulcich, Pacific Seafood Group and most of its 55-entity network of commercial enterprises maintain offices, regularly transact business or are otherwise found within this District.

7. Frank Dulcich, Pacific Seafood Group and its 55-entity network of commercial enterprises have significant contacts with the State of Oregon and this District, and defendants' conduct occurred in part in this District, has affected commerce in this District and caused injury in this District.

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PARTIES

8. Plaintiff Jeff Boardman is a resident of Newport, Oregon and has been a pink shrimp fisherman operating the F/V Miss Yvonne over the last 25 years. Plaintiff MY Fisheries, Inc., which is owned by Jeff Boardman and his wife, is the owner of the F/V Miss Yvonne.

9. Plaintiff Dennis Rankin is a resident of Astoria, Oregon and the owner of plaintiff Rankin Fish, Inc., an Oregon corporation which owns and operates the F/V Steve C and F/V Ashlyne. Both of these fishing vessels regularly participate in the West Coast market for trawl-caught groundfish.

10. Plaintiff Robert Seitz is the captain of the F/V South Bay, which regularly participates in the West Coast market for trawl-caught groundfish. Plaintiff South Bay, Inc. is a California corporation owned by plaintiff Robert Seitz, which owns the F/V South Bay.

11. Plaintiff Todd L. Whaley is the owner and operator of the F/V Miss Sarah and F/V Miss Emily, fishing vessels which have regularly participated in multiple West Coast fisheries over the last 10 years. Plaintiff is a resident of Brookings, in Curry County, Oregon and all three of his fishing vessels have their home ports in Brookings, Oregon.

12. Plaintiff Lloyd D. Whaley is the owner of the F/V B.J. Thomas and F/V Cape Sebastian, fishing vessels which have regularly participated in multiple West Coast fisheries over the last decade. Plaintiff Lloyd D. Whaley is a resident of Brookings, in Curry County, Oregon and his fishing vessels have their home port in Brookings, Oregon.

13. Defendant Pacific Seafood Group is the assumed business name under which the 55 defendant entities owned by defendant Dulcich, Inc., an Oregon corporation, engage in a multi-state seafood processing, sales and distribution business with gross sales in excess of

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$1 billion. Pacific Seafood Group is the single largest seafood company in terms of gross revenue in the United States.

14. Defendant Frank Dulcich is the sole owner of Dulcich, Inc. Defendant Dulcich owns or controls and serves as president or lead executive of all 55 of the named entity defendants in this action.

15. Throughout this complaint the term "Pacific Seafood Group" is used to refer collectively to all 55 of the entities which are named defendants in this action and their sole owner, Frank Dulcich.

16. On information and belief, Ocean Gold Holding, Co., Inc., is a Washington corporation owned by defendant Frank Dulcich for the purpose of acquiring control of Ocean Gold Seafoods, Inc. and its affiliated entities. Defendant Ocean Gold Holding Co., Inc. was registered in Washington on December 12, 2014.

17. Pacific Seafood Group Acquisition Company, Inc., an Oregon corporation, and Pacific Seafood Washington Acquisition Co., Inc., a Washington corporation, are entities utilized by Pacific Seafood Group to acquire multiple seafood industry assets.

18. Defendants Bandon Pacific, Inc., Bio-Oregon Protein, Inc., Pacific Choice Seafood Company, Pacific Coast Seafoods Company, Pacific Garibaldi, Inc., Pacific Gold Seafood Company, Pacific Pride Sea Food Company, Pacific Sea Food Co., Pacific Surimi Co. Inc. and Pacific Tuna Company, LLC are all Oregon corporations engaged in seafood processing in Oregon, Washington or California.

19. Defendant Washington Crab Producers, Inc. is a Washington corporation engaged in the business of seafood processing in the State of Washington.

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20. Defendants Pacific Alaska Shellfish, Inc., Sea Level Seafoods, LLC, Island Fish Co., LLC and Pacific Resurrection Bay are corporations or limited liability companies registered in Alaska that are engaged in the processing of seafood products in the State of Alaska.

21. Defendant Pacific Conquest, Inc., is an Oregon corporation that owns and operates a fishing vessel bearing that name. Defendants Calamari, LLC, Jo Marie LLC, Leslie Lee, LLC, Miss Pacific, LLC, Pacific Future, LLC, Pacific Grumpy J, LLC, Pacific Hooker, LLC, Pacific Horizon, LLC, Pacific Knight, LLC, Privateer LLC, Sea Princess, LLC and Triple Star, LLC are all Oregon limited liability companies that own and operate fishing vessels bearing the entities' names. Defendant Pacific Fishing, LLC manages the 13 entities listed in this paragraph which own and operate fishing vessels on the West Coast.

22. Defendants Pacific Sea Food of Arizona, Inc., Starfish Investments, Inc., Dulcich Surimi, LLC, Bio-Oregon Properties, LLC, Pacific Group Transport Co., Pacific Marketing Group, Inc., Pacific Tuna Holding Company, Inc. and Powell Street Market LLC are all corporations or limited liability companies registered in Oregon that are engaged in the sales and distribution of seafood products throughout the western United States.

23. Defendants Pacific Russia, Inc. and Pacific Russia Ventures, LLC own a significant share of the fishing fleet in Russian waters in the western Pacific Ocean that harvests brown king crab.

24. Defendants Pacific Fresh Sea Food Company and Seacliff Seafoods, Inc. are California corporations engaged in the sales and distribution of seafood products in the State of California.

25. Defendants Copper River Resource Holding Co., Inc., Pacific Copper River Acquisition Co., Inc., Sea Level Seafoods Acquisition, Inc. and Island Coho, LLC are

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corporations or limited liability companies registered in Alaska and engaged in the seafood business.

26. Defendant S & S Seafood Co., Inc. is a Delaware corporation engaged in the sale and distribution of seafood products. Defendant Pacific Seafood Disc, Inc. is a Nevada corporation engaged in the seafood distribution business.

27. Defendants Dulcich Realty, LLC, Dulcich Realty Acquisition, LLC, and Dulcich Development, LLC are Oregon limited liability companies that own real estate underlying Pacific Seafood Group assets that is leased to various Pacific Seafood Group entities. Defendant Dulcich Jet, LLC is an Oregon limited liability company that owns a jet leased to Pacific Seafood Group.

28. The 55 above-named entities are owned and controlled by Frank Dulcich either individually or through Dulcich, Inc., which is owned by defendant Frank Dulcich. Mr. Dulcich and his senior managers operate the 55 above-named defendants as integrated enterprise that is promoted and represented to U.S. and international seafood markets as Pacific Seafood Group.

OCEAN GOLD SEAFOODS, INC. AND ITS AFFILIATED ENTITIES

29. Ocean Gold Seafoods, Inc. owns and operates a seafood processing plant in Westport, Washington that is the most modern and largest seafood processing plant on the West Coast. Defendant Frank Dulcich owns 31.2% of the stock of Ocean Gold Seafoods, Inc. Pacific Seafood Group controls virtually all aspects of the business operations of Ocean Gold Seafoods, Inc. through a comprehensive, exclusive long-term contract, specifically through defendant Pacific Gold Seafood Company, a contract which expires in February 2016.

30. Ocean Gold Seafoods, Inc. owns or is affiliated with companies owned by its primary shareholders that are integrated with the operations of Ocean Gold Seafoods. These

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entities include Ocean Protein, LLC, which owns and operates the largest fish waste processing plant on the West Coast, Ocean Cold, LLC, which owns and operates an 87,000 square foot cold storage and processing facility (the largest owned by any West Coast seafood processor) and Sea Clipper, LLC and Bainbridge, LLC, large fishing vessels which hold permits for groundfish and whiting.

RELEVANT PRODUCT MARKETS

West Coast Seafood Markets for Groundfish, Pacific Onshore Whiting and Pacific Coldwater Shrimp.

31. Groundfish is a well-recognized category of fish species harvested in deep water using multiple methods including longline gear, baited traps and trawling. Trawl fishermen tow a cone-shaped net bag which scoops up groundfish as its trails along, often utilizing heavy doors to keep the net mouth open and chains to hold the net end down. The major species harvested in the West Coast groundfish fishery are multiple species of flounder, sole, rockfish and sablefish. Trawl-caught groundfish is an economically distinct seafood input market that is geographically confined to the West Coast from Ft. Bragg, California to the Canadian border.

32. Pacific whiting is an abundant West Coast fishery harvested throughout the spring and summer when large schools of migrating whiting are found off the coasts of Oregon, Washington and northern California. Pursuant to federal regulation, 42% of the annual Pacific whiting harvest is allocated to the onshore fishery, which is harvested by midwater trawlers and processed by onshore processors in Oregon, Washington and California. The onshore Pacific whiting fishery is an economically distinct seafood input market that is geographically confined to the West Coast from Ft. Bragg, California to the Canadian border.

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33. Pacific coldwater pink shrimp is a species of shrimp that is found in the north Pacific Ocean and harvested primarily off the coasts of Oregon and Washington. The Pacific coldwater shrimp harvested annually are delivered by commercial fishing vessels for processing at plants in coastal communities in Oregon, Washington and California. Pacific coldwater shrimp is an economically distinct seafood input market that is geographically confined to the West Coast from Ft. Bragg, California to the Canadian border.

34. The processing plants specializing in the processing of trawl-caught groundfish, whiting and Pacific coldwater shrimp are all located in coastal communities in Oregon, Washington and northern California. Because of fuel, time constraints and the perishable character of these seafood commodities, West Coast fishermen harvesting these three seafood commodities do not fish more than 60 to 100 miles away from the processor to which the seafood commodity will be delivered.

35. This 60 to 100 mile geographic limit on the area that is tributary to an individual seafood processor or a group of seafood processors is consistent up and down the West Coast and applies equally to all three of these seafood commodity input markets. Therefore, the relevant input markets for processed trawl-caught groundfish, Pacific onshore whiting and Pacific coldwater shrimp are all geographically confined to U.S. waters off the West Coast and the seafood processors located in coastal communities in Oregon, Washington and California from Ft. Bragg, California to the Canadian border.

PACIFIC SEAFOOD GROUP'S MONOPOLY POWER

36. Since at least 2005, Pacific Seafood Group has possessed monopoly power in the relevant seafood input markets for processed trawl-caught groundfish, Pacific onshore whiting and Pacific coldwater shrimp. In calendar year 2009, Pacific Seafood Group possessed

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monopoly power in the West Coast seafood input markets for processed trawl-caught groundfish, Pacific onshore whiting and Pacific coldwater shrimp. In calendar year 2009, Pacific Seafood Group controlled a market share of 53% in the trawl-caught groundfish market, a market share of 65% in the Pacific onshore whiting market and a market share of 71% in the Pacific coldwater shrimp market. Pacific Seafood Group's market shares in each of these three markets have not changed materially since 2009.

37. Since at least 2005, Pacific Seafood Group's monopoly power in each of these three relevant input markets has been protected by substantial barriers to entry and expansion. These barriers include the following: the inelastic character of the supply in each of these three seafood commodity input markets; the uncertain prospects for future supply as a result of intensive regulation; Pacific Seafood Group's reputation for exclusionary conduct as the dominant purchaser of these seafood commodities over the last decade; the substantial capital investment required to enter the seafood processing industry; Pacific Seafood Group's absolute cost advantages over its processor competitors; the economies of scale and vertical integration fostering Pacific Seafood Group's maintenance and expansion of its monopoly power over these three seafood input markets; and the limited number of waterfront locations zoned and suitable for operation of a seafood processing plant.

38. Pacific Seafood Group's control over all fish waste processing in Oregon and its ownership position in the major fish waste processing plant in Washington are significant barriers to entry because Pacific Seafood Group has the power, in the event a 2012 Class Action Settlement Agreement expires, to refuse to do business with new entrant seafood processors on the West Coast if that is to its competitive advantage.

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39. Trawl-caught groundfish, Pacific onshore whiting and Pacific coldwater shrimp are three of the four most valuable seafood input markets on the West Coast of the United States. The aggressive consolidation and monopolization of these markets by Pacific Seafood Group has inflicted significant harm upon West Coast fishermen, fishing vessel owners and coastal communities that depend in significant part on the economics of the fishing industry. For example, Brookings, Oregon has historically been one of the coastal communities most economically dependent upon the health of the fishing industry. A port which once had several seafood processors now has none as a result of the consolidation of processing capacity by Pacific Seafood Group in other locations.

ANTICOMPETITIVE CONDUCT

40. Pacific Seafood Group has used its unlawfully created and maintained monopoly control over three West Coast seafood commodity input markets for the purpose of suppressing the ex vessel prices paid to fishermen in each of these three seafood input markets. As alleged below, this has been accomplished through an aggressive program of vertically integrated acquisitions to acquire competitor processors, fishing vessels and harvest permits, multiple tactics to set and enforce prices, exclusive dealing and tying arrangements, stealing of seafood commodities through multiple fraudulent schemes and fraudulent representations to a federal agency.

41. In addition, between at least 2005 and the signing of a Class Action Settlement Agreement, Pacific Seafood Group actively conspired with Ocean Gold Seafoods to fix the ex vessel prices paid to fishermen in the onshore whiting market and to allocate individual fishing vessel suppliers in this seafood input market between Pacific Seafood Group and Ocean Gold Seafoods.

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Vertically Integrated Acquisitions

42. **Processing Capacity.** In 1980, there were 50 substantial seafood processors up and down the West Coast. In 1983, Pacific Seafood Group first entered the West Coast seafood processing market with the acquisition of a plant in Warrenton, Oregon that is presently owned and operated by defendant Pacific Coast Seafoods Company. Over the course of the last 31 years, Pacific Seafood Group has acted aggressively to eliminate West Coast seafood processor competition through multiple acquisitions and other tactics, amassing market shares of 50% to over 70% in the highest volume fishery input markets on the West Coast. As of January 2015, Pacific Seafood Group owned and operated 18 seafood processing plants or landing stations in West Coast fishing communities including the only processing plants in seven coastal cities. These facilities and the dates of acquisition are set out below:

1983 — Pacific Coast Seafood, Warrenton, Oregon

1986 — Pacific Choice Seafood, Eureka, California

1990 — Pacific Choice Seafood, Charleston, Oregon

1990 — Pacific Pride Seafood Company, Mukilteo, Washington

1993 — Washington Crab Producers, Westport, Washington

1993 — Pacific Oyster Co., Bay City, Oregon

1995 — Pacific Surimi, Warrenton, Oregon

1996 — Pacific Shrimp, Newport, Oregon

1996 — Hoy Brothers, Garibaldi, Oregon

1999 — S&S Seafood Company, Portland, Oregon

2001 — Eureka Fish Company, Eureka, California

2001 — Landing Station, Crescent City, California

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2003 — Starfish, Inc., Seattle, Washington

2003 — Landing Station, San Francisco, California

2004 — North Bend Oyster Company, Inc., North Bend, Oregon

2007 — Bio-Oregon Protein, Inc., Warrenton, Oregon

2007 — Pacific Garibaldi, Inc., Garibaldi, Oregon

2007 — Brookings Landing Station, Brookings, Oregon

43. Frank Dulcich also owns 31.2% of the stock of an approximately one-third interest in the stock of Ocean Gold Seafoods, Inc. in Westport, Washington and Pacific Seafood Group has an exclusive contract to sell all of Ocean Gold Seafood's production.

44. In 2013, Pacific Seafood Group's Warrenton plant referred to as Pacific Coast Seafood burned to the ground. Despite promises by defendant Dulcich, the facility has not been rebuilt and Pacific Coast Seafood is leasing space for processing from the Port of Astoria at Tongue Point. In the event defendant Dulcich and/or Pacific Seafood Group acquire controlling interests in Ocean Gold Seafoods and its affiliates, there is a strong likelihood that the Pacific Coast Seafood plant at Warrenton will never be rebuilt.

45. In 2005, Pacific Seafood Group secured a 50% ownership position in Ucluelet Seafood Processors Ltd. in British Columbia, which owns and operates the largest whiting and groundfish processing plant in British Columbia. Pacific Seafood Group is actively utilizing its control of at least half of the whiting and groundfish processed at the Ucluelet Seafood Processors plant to increase its market power over these commodities in U.S. and foreign markets.

46. Since the June 21, 2012 effective date of the Class Action Settlement Agreement, Pacific Seafood Group has substantially increased its market power in the seafood processing

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industry in British Columbia. It now owns 100% of Ucluelet Seafood Processors, Ltd. and acquired seafood processing plants in Masset and Prince Rupert, British Columbia. Pacific Seafood Group is presently one of the three dominant seafood processors in British Columbia.

47. Pacific Seafood Group has acquired many of the processing plants and landing stations listed above at prices substantially below fair market value. This has been accomplished in part by aggressive use of a fraudulent tactic where Pacific Seafood Group makes a loan to a processor which includes a requirement that the processor deliver all product to Pacific Seafood Group for resale or granting Pacific Seafood Group the exclusive right to sell all seafood products generated by that plant. Then, at a point where Pacific Seafood Group owes the processor a substantial sum, defendants trump up a quality claim, impose severe financial hardship on the processor and then negotiate to acquire it at a discounted price.

48. In 2010, in the midst of the *Whaley* class action case, Pacific Seafood Group attempted to acquire Ocean Gold Seafoods, Inc. and its affiliates in a transaction that was to close in the fall of 2010. When plaintiffs learned of the imminent transaction and filed a motion for temporary restraining order to stop the deal, defendants Dulcich and Pacific Seafood Group mooted the issued by calling of the transaction.

49. **Fishing Vessels.** During the last 15 years, Pacific Seafood Group has been the single largest buyer of fishing vessels on the West Coast. Pacific Seafood Group currently owns 13 fishboats operating in multiple fisheries in West Coast waters.

50. **Harvest Permits.** Pacific Seafood Group has been an aggressive purchaser of seafood harvest permits which are typically then matched with company-owned fishing vessels. Since the West Coast groundfish and whiting markets were rationalized with the issuance of individual fish quota shares by the federal government in 2011, Pacific Seafood Group holds

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quota shares that are substantially above the accumulation limits established by the National Marine Fisheries Service and which by regulation require the divestiture of quota shares above those accumulation limits by end of 2015. These regulations also prohibit entities holding quota shares above the accumulation limits from acquiring additional quota shares. If Pacific Seafood Group acquires Ocean Gold Seafoods, it will also acquire substantial additional quota shares in the onshore whiting and groundfish markets, all in violation of existing law.

51. **Multiple Tactics to Set and Enforce Ex Vessel Prices.** During the period of 1983 through the filing of the *Whaley* class action lawsuit in mid-2010, Pacific Seafood Group used multiple tactics to set and enforce ex vessel prices. These tactics included efforts to intimidate competitors who offered higher ex vessel prices, use of Pacific Seafood Group's captive fishing fleet to set or hold down ex vessel prices and the use of arbitrary poundage limits on fishing vessel deliveries.

52. **Exclusive Dealing and Tying Arrangements.** Between 2002 and the signing of the Class Action Settlement Agreement in 2012, Pacific Seafood Group used multiple schemes to coerce fishermen into long-term exclusive dealing arrangements in which Pacific Seafood Group essentially dictated seafood commodity pricing to the involved fishermen. Pacific Seafood Group coerced fishermen into oral multi-year exclusive dealing arrangements through the illegal tying of its willingness to make a market for seafood commodities in which it held substantial market power to a commitment by that fisherman to deliver other seafood commodities to Pacific Seafood Group, through retaliation against non-complying fishermen and by making loans and advances to fishermen conditioned on delivery of all seafood commodities harvested by that fisherman to Pacific Seafood Group. Pacific Seafood Group has also used exclusive dealing arrangements with Ocean Gold Seafoods to control its operations and the sale

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of all products except bait pursuant to contracts that have been in place since 1999. The current agreement is dated February 9, 2006 and expires in February 2016.

53. **Theft of Seafood Commodities from Fishermen.** During the period of 1983 through the filing of the *Whaley* class action lawsuit in mid-2010, Pacific Seafood Group engaged in the theft of seafood commodities from fishermen through multiple schemes including manipulation of scales at its processing plants, allowing plant managers to override scale data, arbitrarily increasing ice deductions that reduced the actual poundage delivered, tallying delivered fish as smaller than actual and unilaterally designating a portion of a delivered catch as an unusable "weighback" for which there is no payment.

54. **Fraudulent Representations to Public Agencies.** During the period of 2006-08, Pacific Seafood Group made false representations to the Pacific Fisheries Management Council (PFMC) which successfully influenced the PFMC to grant a 20% share of onshore whiting quota to processors rather than granting 100% of that quota to fishermen as is the case with all other federally regulated West Coast fisheries.

PROCOMPETITIVE FEATURES OF CLASS ACTION SETTLEMENT AGREEMENT

55. The Class Action Settlement Agreement contained multiple procompetitive features related specifically to Pacific Seafood Group and Ocean Gold Seafoods, Inc. These included a prohibition on either company renewing the February 9, 2006 agreement making Pacific Seafood Group the exclusive marketer of any seafood product produced by Ocean Gold Seafoods and the elimination of two provisions in that agreement granting Pacific Seafood Group the power to determine the ex vessel prices paid by Ocean Gold Seafoods to West Coast fisherman.

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56. The Class Action Settlement Agreement created a pathway for Ocean Gold Seafoods, Inc. and its affiliated companies to become competitively free and independent in February 2016. If Pacific Seafood Group is allowed to acquire a controlling ownership of Ocean Gold Seafoods and its affiliated companies, this procompetitive feature of the Class Action Settlement Agreement will be subverted in clear violation of the Agreement.

HARM TO COMPETITION

57. Pacific Seafood Group's aggressive acquisition of its processor competition and its intentional use of multiple anticompetitive, exclusionary actions as alleged above has caused a substantial loss of competition in the West Coast fishing industry generally and specifically the seafood input markets for trawl-caught groundfish, Pacific onshore whiting and Pacific coldwater shrimp and has resulted in Pacific Seafood Group acquiring monopoly power in each of these markets in violation of the Sherman Act. This loss of competition has resulted in price suppression in each of the seafood input markets at issue in this case.

58. As a result of the actions by Pacific Seafood Group, there are many fewer seafood processors in West Coast coastal communities than would be the case in the absence of their monopolistic and predatory actions as described above. As a result, innovation in the industry is constrained in terms of the range of seafood products offered to consumers. In addition, consumers are offered more frozen and less fresh seafood products than would be the case in a more competitive seafood market.

59. Unless precluded by court action, Pacific Seafood Group's acquisition of full control of Ocean Gold Seafoods and its affiliated companies will increase the monopoly power that Pacific Seafood Group currently holds in the West Coast markets for trawl-caught groundfish, Pacific whiting and Pacific coldwater shrimp. As a result, Pacific Seafood Group's

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remaining seafood processor competitors will be exposed to a greater risk of being forced out of business to the long-term detriment of West Coast fishermen engaged in these markets and to U.S. consumers of the processed seafood generated by these markets.

FIRST CLAIM FOR RELIEF

(Monopolization)

60. Plaintiffs reallege paragraphs 1 through 59.

61. The acquisition of Ocean Gold Seafoods, Inc. and its affiliated companies by Pacific Seafood Group will increase defendants' existing monopoly power positions in the West Coast markets for trawl-caught groundfish, Pacific whiting and Pacific coldwater shrimp in violation of Section 2 of the Sherman Act. As participants in each of these markets, plaintiffs will suffer irreparable harm in the form of decreased competition for the sale of their seafood commodities, which will result in lower prices and the likely loss of additional seafood processor competitors of Pacific Seafood Group.

62. To prevent Pacific Seafood Group from violating Section 2 of the Sherman Act through its ongoing monopolization efforts as alleged above, this Court should order temporary, preliminary and permanent injunctions prohibiting Pacific Seafood Group from acquiring any increased ownership in Ocean Gold Seafoods or any of its affiliated entities. In addition, this Court should enter appropriate orders prohibiting defendant Frank Dulcich from receiving competitively sensitive information from Ocean Gold Seafoods or its affiliated entities and precluding him from interfering with the operations of these companies in any way.

SECOND CLAIM FOR RELIEF

(Attempted Monopolization)

63. Plaintiffs reallege paragraphs 1 through 62.

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64. With the specific intent to obtain monopoly power, Pacific Seafood Group is attempting to monopolize the West Coast seafood input markets for trawl-caught groundfish, Pacific onshore whiting and Pacific coldwater shrimp through the use of the predatory and exclusionary practices alleged in paragraphs 36 through 58 above and through the acquisition of ownership control of Ocean Gold Seafoods and its affiliated entities.

65. To prevent Pacific Seafood Group from violating Section 2 of the Sherman Act through its ongoing monopolization efforts as alleged above, this Court should order temporary, preliminary and permanent injunctions prohibiting Pacific Seafood Group from acquiring any increased ownership in Ocean Gold Seafoods or any of its affiliated entities. In addition, this Court should enter appropriate orders prohibiting defendant Frank Dulcich from receiving competitively sensitive information from Ocean Gold Seafoods or its affiliated entities and precluding him from interfering with the operations of these companies in any way.

THIRD CLAIM FOR RELIEF

(Declaratory Judgment)

66. Plaintiffs reallege paragraphs 1 through 65.

67. All plaintiffs in this action were either class representatives in the *Whaley* class action case or members of the certified class in that case.

68. The Class Action Settlement Agreement prohibits the renewal of the February 9, 2006 agreement between Pacific Seafood Group and Ocean Gold Seafoods upon its expiration in February 2016. The acquisition of a controlling ownership interest in Ocean Gold Seafoods and its affiliates by Pacific Seafood Group will clearly violate this provision of the Class Action Settlement Agreement by subverting the intent of the Agreement through a device designed to sidestep Pacific Seafood's obligations under the Class Action Settlement Agreement, all in

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violation of its obligation of good faith and fair dealing to the West Coast fishermen who were parties to that Agreement.

69. Plaintiffs seek a declaration from this Court that any acquisition of a controlling interest in Ocean Gold Seafoods or its affiliates constitutes a violation of Pacific Seafood Group's obligations under the Class Action Settlement Agreement.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray that this Court award the following relief:

1. On plaintiffs First and Second Claims, enter temporary, preliminary and permanent injunctions against Pacific Seafood Group acquiring any increased ownership in Ocean Gold Seafoods or its affiliates and imposing appropriate restrictions on the involvement in these entities by defendant Frank Dulcich as a minority shareholder;

2. On plaintiffs Third Claim, an order declaring that the acquisition of any increased ownership interest by Pacific Seafood Group in Ocean Gold Seafoods or its affiliates constitutes a violation of the Class Action Settlement Agreement;

3. Awarding plaintiffs their reasonable attorneys' fees and costs; and

4. Granting such other and further relief as the Court deems just and equitable.

DATED this 22nd day of January, 2015.

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