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11 Attorneys for John Gross & Company,
12 on behalf of itself and all others similarly
13 situated

14 **UNITED STATES DISTRICT COURT**
15 **SOUTHERN DISTRICT OF CALIFORNIA**

16 JOHN GROSS & COMPANY, on
17 behalf of itself and all others similarly
18 situated,

19 Plaintiff,

20 v.

21 BUMBLE BEE FOODS LLC,
22 TRI-UNION SEAFOODS LLC,
23 STARKIST COMPANY, and
24 TRI MARINE INTERNATIONAL,
25 INC.,

26 Defendants.

CASE NO. '16CV0635 JLS MDD

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiff, John Gross & Company (“Plaintiff”), on behalf of itself and all
2 others similarly situated, brings this action for damages and injunctive relief under
3 the antitrust laws of the United States and alleges as follows. All allegations herein
4 other than those relating directly to Plaintiff are based on information and belief.

5 **INTRODUCTION**

6 1. This action arises out of a conspiracy by the three largest brand name
7 producers of packaged seafood products (“PSPs”) in the United States, its territories
8 and the District of Columbia (Bumble Bee Foods LLC, Tri-Union Seafoods LLC,
9 and StarKist Company) as well as a white label, common supplier to all three (Tri
10 Marine International, Inc.) which began no later than January 1, 2008, and continues
11 to the present (the “Class Period”), to fix, raise, maintain, and/or stabilize prices
12 for PSPs within the United States, its territories and the District of Columbia in
13 violation of Sections 1 and 3 of the Sherman Antitrust Act (15 U.S.C. §§ 1, 3). As
14 used herein, the term “PSPs” refers to shelf-stable seafood products (predominantly
15 tuna) that are sold in cans, pouches or ready-to-eat serving packages.

16 **JURISDICTION AND VENUE**

17 2. This complaint is filed under Sections 4 and 16 of the Clayton Act, 15
18 U.S.C. §§ 15 and 26, to recover treble damages, equitable relief, costs of suit, and
19 reasonable attorneys’ fees for violation of Sections 1 and 3 of the Sherman Act, 15
20 U.S.C. §§ 1, 3. The Court has original federal question jurisdiction over the
21 Sherman Act claim asserted in this complaint pursuant to 28 U.S.C. §§ 1331 and
22 1337 and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26.

23 3. Venue is proper in this District pursuant to Sections 4(a) and 12 of the
24 Clayton Act, 15 U.S.C. §§ 15 and 22, and 28 U.S.C. § 1391(b), (c), and (d) because
25 Defendants reside, transact business, are found within, and/or have agents within
26 this District, and a substantial part of the events giving rise to Plaintiff’s claims
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1 occurred and a substantial portion of the affected interstate trade and commerce
2 described below has been carried out in this District.

3 4. This Court has personal jurisdiction over Defendants because, *inter alia*,
4 each: (a) transacted business in this District; (b) directly or indirectly sold and
5 delivered PSPs in this District; (c) has substantial aggregate contacts with this
6 District; and (d) engaged in an illegal price-fixing conspiracy and agreement to limit
7 capacity that was directed at, and had the intended effect of causing injury to,
8 persons and entities residing in, located in, or doing business in this District.

9 **PARTIES**

10 5. Plaintiff is a corporation with its principal place of business in
11 Mechanicsburg, Pennsylvania. During the Class Period, Plaintiff purchased PSPs
12 directly from one of more of the Defendants and has suffered pecuniary injury as a
13 result of the antitrust violation alleged herein.

14 6. Defendant Bumble Bee Foods LLC (“Bumble Bee”) is a domestic
15 corporation with its principal place of business located at 9855 Granite Ridge Drive,
16 Suite 100, San Diego CA 92123. Bumble Bee produces and sells PSPs throughout
17 the United States (including this District), its territories and the District of
18 Columbia. Bumble Bee is privately owned by Lion Capital (“Lion”), based in the
19 United Kingdom.

20 7. Defendant Tri-Union Seafoods LLC is a domestic corporation with its
21 principal place of business located at 9855 Granite Ridge Drive, Suite 100, San
22 Diego CA 92123. Tri-Union Seafoods LLC produces and sells PSPs throughout the
23 United States (including this District), its territories and the District of Columbia.
24 Unless otherwise indicated, Tri-Union Foods LLC will be referred to herein as
25 “CoS.” CoS is owned by Thai Union Frozen Products (“TUF”), a company based
26 in Thailand.

27 8. Defendant StarKist Company (“StarKist”) is a domestic corporation
28

1 with its headquarters at 225 North Shore Drive, Suite 400, Pittsburgh PA 15212.
 2 StarKist produces and sells PSPs throughout the United States (including this
 3 District), its territories and the District of Columbia. StarKist is privately owned by
 4 Dongwon Enterprise (“Dongwon”), based in South Korea.

5 9. Defendant Tri Marine International, Inc. (“Tri Marine”) is a domestic
 6 corporation with its principal place of business located at 10500 N.E. 8th St., Suite
 7 1888, Bellevue, WA 98004. Tri Marine’s website states as follows:

8 The right combination of fishing fleets, processing plants,
 9 and global organization makes Tri Marine a comprehensive
 and reliable supply partner for tuna and tuna products.

10 Tri Marine's contract and owned fishing fleets deliver their
 11 catch to our processing plants, which are located near the
 12 fishing grounds in countries that can export duty free to
 end markets. With enough capital, technical expertise and
 13 experienced management, we make it all work together for
 the specific benefit of the world's leading tuna brands.

14 Tri Marine operates a fish processing plant in San Pedro, California and supplies,
 15 inter alia, processed tuna to its “partners,” which include StarKist and CoS, for use
 16 in the production of PSPs. Tri Marine also operates a management company called
 17 Tri Marine Management Co., LLC and The Tuna Store, LLC to market and sell
 18 PSPs. Tri Marine produces PSPs under its own “Ocean Naturals” label and produces
 19 PSPs for Costco under the “Kirkland” brand name. Tri Marine’s website describes
 20 itself as “a vertically integrated supplier of private label and branded, consumer
 21 packaged cans and pouches, and fresh, frozen and Ultra Low Temperature (ULT)
 22 seafood products.”

23 **UNNAMED CO-CONSPIRATORS**

24 10. On information and belief, at all relevant times, other producers of
 25 PSPs willingly conspired with Defendants in their unlawful restraint of trade. All
 26 averments herein against Defendants are also averred against these unnamed co-
 27 conspirators.
 28

1 **AGENTS**

2 11. The acts alleged to have been done by Defendants were authorized,
3 ordered, or performed by their directors, officers, managers, agents, employees, or
4 representatives while actively engaged in the management of Defendants' affairs.

5 **INTERSTATE TRADE AND COMMERCE**

6 12. Throughout the Class Period, there was a continuous and uninterrupted
7 flow of invoices for payment, payments, and other documents essential to the sale of
8 packaged seafood products in interstate commerce between and among offices of
9 Defendants and their customers located throughout the United States, its territories
10 and the District of Columbia.

11 13. Throughout the Class Period, Defendants transported substantial
12 amounts of PSPs in a continuous and uninterrupted flow of interstate commerce
13 throughout the United States, its territories and the District of Columbia.

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

18 **FACTUAL ALLEGATIONS**

19 15. PSPs are sold to club warehouses, retail groceries, grocery cooperatives,
20 mass merchandisers, and drug stores, among others. According to a May 2012
21 presentation by Bumble Bee, total United States retail sales of shelf-stable seafood
22 products were \$2.346 billion in 2011 and were estimated to be \$2.397 billion in
23 2012. In one report, Bumble Bee estimated that canned tuna represents 73% of this
24 value. In the same report, Bumble Bee estimated that total United States retail sales
25 of shelf-stable tuna were \$1.719 billion in 2011 and were estimated to be \$1.750
26 billion in 2012.

1 16. Defendants are the three largest domestic manufacturers of PSPs. The
2 industry is highly concentrated. According to the aforementioned presentation by
3 Bumble Bee, it had 29% of the domestic shelf-stable seafood market, CoS had
4 18.4% and StarKist had 25.3%. The remaining market share was comprised of
5 smaller companies and private label brands. With respect to shelf-stable tuna,
6 StarKist had 34.6% of the market, Bumble Bee had 27.8% and CoS had 19.4%. In
7 December of 2014, the Wall Street Journal reported that the Defendants' respective
8 shares of the domestic market for canned tuna were 13% for CoS, 25% for Bumble
9 Bee, and 36% for StarKist. Bualuang Securities reported the shares for the domestic
10 canned tuna market slightly differently, with StarKist at 30%, Bumble Bee at 28%
11 and CoS at 20%.

12 17. This oligopolistic structure within the industry is the result of recent
13 mergers and acquisitions. For example, in 1997, Van Camp Seafood Company
14 ("Van Camp") was acquired by the investment group Tri-Union Seafoods LLC,
15 of which TUF was a member. Thereafter, TUF bought out the other investors to
16 acquire Van Camp completely, which it renamed Chicken of the Sea International,
17 an entity that was later merged into Tri-Union Seafoods LLC. In 2008, Dongwon
18 acquired StarKist from Del Monte Foods for \$363 million. Similarly, in 2014,
19 TUF bought King Oscar, a Norwegian sardine canner that sold 37% of its products
20 in the United States. And in December of 2014, TUF announced the acquisition
21 from Lion (subject to regulatory approval) of Bumble Bee for \$1.51 billion. The
22 combination of CoS and Bumble Bee would have created a virtual duopoly, with
23 the combined entity substantially exceeding the market share of StarKist. TUF had
24 planned to finance the acquisition partly through a preferential public offering to
25 existing shareholders that would have raised approximately \$380 million.

26 18. On July 23, 2015, TUF suspended the preferential public offering in
27 light of a grand jury investigation commenced by the Antitrust Division of the
28

1 United States Department of Justice (“DOJ”). TUF disclosed on that day that both
 2 Bumble Bee and CoS had received grand jury subpoenas relating to an antitrust
 3 investigation of PSPs. The publication Undercurrent News further reported in an
 4 article dated that same day that “Thai Union held a conference with analysts on the
 5 suspension of the share offer, in which the company’s management said other US
 6 seafood producers have also received a subpoena requiring the production of
 7 relevant information to the DOJ.” The publication *Global Competition Review*
 8 similarly reported as follows:

9 In a letter to the Bangkok stock exchange on Wednesday,
 10 Thai Union chairman Kraisor Chansiri confirmed that the
 11 US Department of Justice is investigating his company’s
 12 sector, causing Thai Union to suspend a stock issuance that
 had been intended to finance the \$1.5 billion acquisition
 of Bumble Bee.

13 He said the Thai Union subsidiary Tri-Union Seafoods,
 14 which operates in the US under the Chicken of the Sea
 brand, had received a subpoena “requiring Tri-Union to
 15 provide relevant information to the DoJ in relation to an
 antitrust investigation of the packaged seafood industry
 in the United States.”

16 19. The article goes on to state:

17 An industry expert said the subpoena does not appear to be
 18 limited to the merger review, and early information indicates
 19 the demand for information came from a separate section
 of the antitrust division, not one tasked with analysing deals.
 20 It is highly likely that something produced in the merger
 investigation sparked this investigation touching the industry
 as a whole rather than just the parties to the deal, he said.

21 *****

22 The source said others in the industry are now anticipating
 23 that they too will be subpoenaed....

24 20. Based on these statements, it appears that StarKist received a subpoena
 25 as well and that the DOJ’s investigation extends to the entire domestic PSP sector.

26 21. On October 13, 2015, it was revealed that Tri Marine also received a
 27 subpoena in connection with the DOJ’s investigation.
 28

22. The fact that these companies received subpoenas from a federal grand jury is significant, as is reflected in Chapter 3 of the 2014 edition of the DOJ's Antitrust Division Manual, available at <http://www.justice.gov/atr/public/divisionmanual/chapter3.pdf>. Section F.1 of that chapter notes that "staff should consider carefully the likelihood that, if a grand jury investigation developed evidence confirming the alleged anticompetitive conduct, the Division would proceed with a criminal prosecution." Id. at III-82. The staff request needs to be approved by the relevant field chief and is then sent to the Antitrust Criminal Enforcement Division." Id. "The DAAG [Deputy Assistant Attorney General] for Operations, the Criminal DAAG, and the Director of Criminal Enforcement will make a recommendation to the Assistant Attorney General. If approved by the Assistant Attorney General, letters of authority are issued for all attorneys who will participate in the grand jury investigation." Id. at III-83. "The investigation should be conducted by a grand jury in a judicial district where venue lies for the offense, such as a district from or to which price-fixed sales were made or where conspiratorial communications occurred." Id.

23. On October 13, 2015, it was further revealed in a news article that

It is understood that during the course of the DOJ's merger review, evidence of the cartel was uncovered. Chicken of the Sea then sought leniency from the DOJ, which grants full immunity to the first company to come forward and admit to cartel violations. It is likely that Chicken of the Sea is seeking so-called "Type B" leniency, in which the DOJ uncovers wrongdoing first and then uses a company's cooperation to build out its case.

24. The significance of CoS seeking Type B leniency is explained on one of the DOJ's webpages (<http://www.justice.gov/atr/frequently-asked-questions-regarding-antitrust-divisions-leniency-program>):

5. Does a leniency applicant have to admit to a criminal violation of the antitrust laws before receiving a conditional leniency letter?

1 Yes. The Division's leniency policies were established for
 2 corporations and individuals "reporting their illegal antitrust
 3 activity," and the policies protect leniency recipients from
 4 criminal conviction. Thus, the applicant must admit its
 5 participation in a criminal antitrust violation involving price
 6 fixing, bid rigging, capacity restriction, or allocation of
 7 markets, customers, or sales or production volumes before
 it will receive a conditional leniency letter. Applicants that
 have not engaged in criminal violations of the antitrust laws
 have no need to receive leniency protection from a criminal
 violation and will receive no benefit from the leniency
 program.

8 As indicated on the webpage, the leniency applicant must also establish "[t]he
 9 confession of wrongdoing is truly a corporate act, as opposed to isolated confessions
 10 of individual executives or officials."

11 25. Plaintiff, therefore, alleges on information and belief that Tri-Union has
 12 confessed its participation in the conspiracy alleged herein and that CoS, Starkist
 13 Company and Tri Marine participated in it.

14 26. On December 3, 2015, the DOJ announced that TUF and Bumble Bee
 15 had abandoned their plans to merge after the DOJ informed the companies it had
 16 serious concerns that the proposed transaction would harm competition. Assistant
 17 Attorney General Bill Baer of the DOJ's Antitrust Division stated

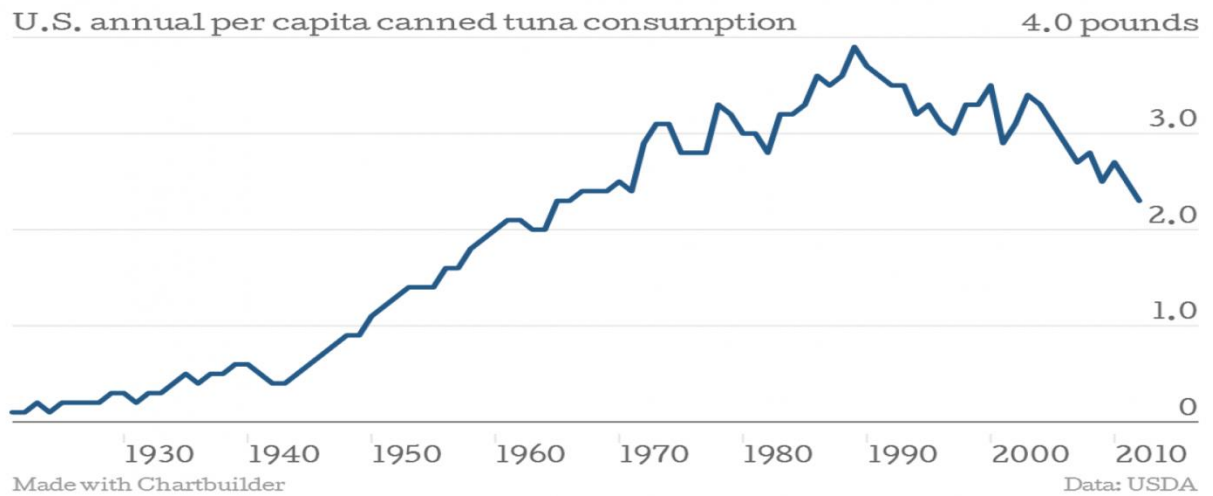
18 Our investigation convinced us – and the parties knew or
 19 should have known from the get go – *that the market is not*
 20 *functioning competitively today*, and further consolidation
 would only make things worse. (Emphasis added.)

21 26. There are economic indications that support the conclusion that there
 22 was collusive pricing within the domestic PSP industry.

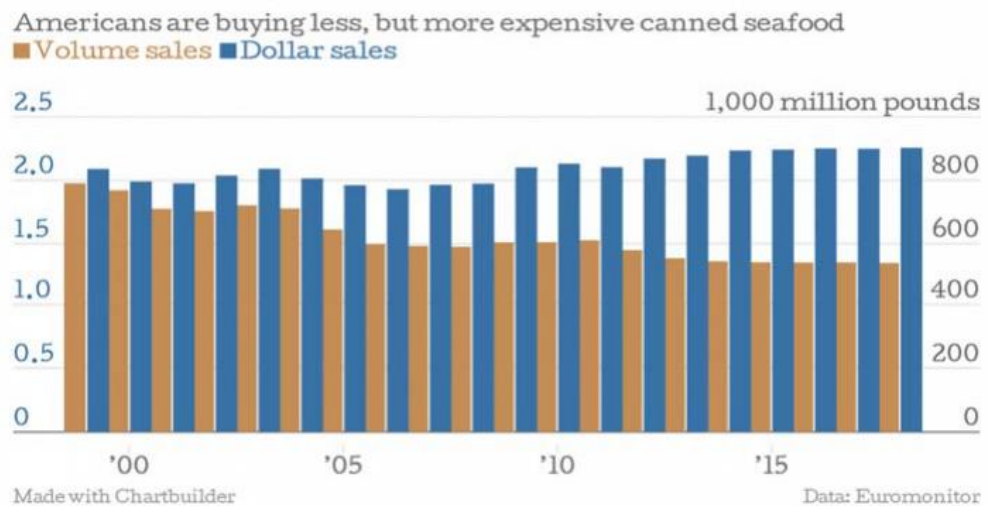
23 27. Consumption of PSPs, particularly canned tuna, has declined over the
 24 last ten years in the United States. The annual consumption per person was 3.1 lbs.
 25 in 2005, but had fallen to 2.3 lbs. in 2013. This trend has been widely reported.

26 28. An article in the *Washington Post* graphically represented this decline
 27
 28

by measuring United States annual per capita consumption from 1930 to 2010:



The same article presented this graph, showing that while Americans are buying less canned seafood, they are paying more for what they do buy:



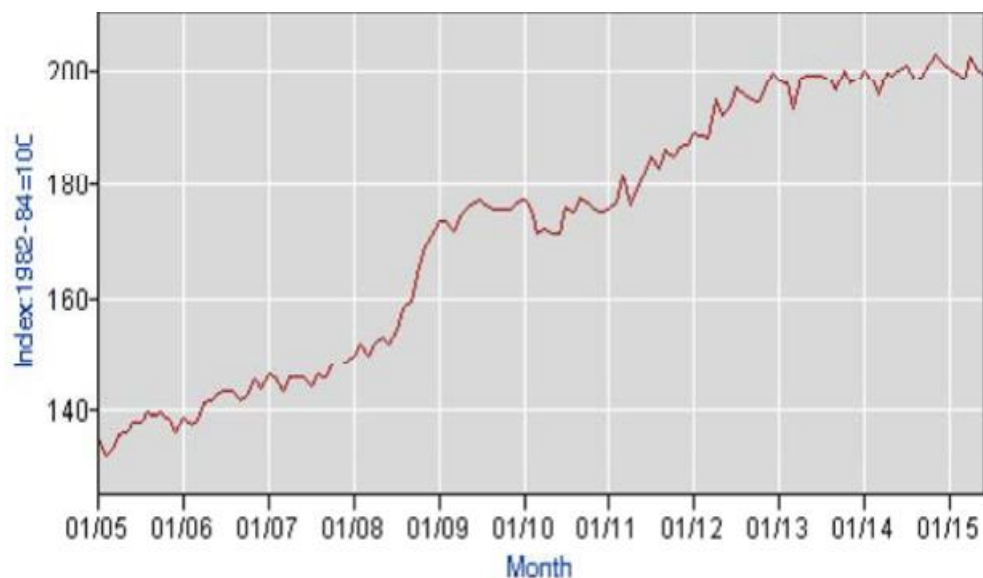
29. Similarly, the National Marine Fisheries Service reported the following consumption trends for canned fish from 1985 to 2013:

U.S. ANNUAL PER CAPITA CONSUMPTION OF CANNED FISHERY PRODUCTS, 1985-2013

Year	Salmon	Sardines	Tuna	Shellfish	Other	Total
----- Pounds -----						
1985	0.5	0.3	3.3	0.5	0.4	5.0
1986	0.5	0.3	3.6	0.5	0.5	5.4
1987	0.4	0.3	3.5	0.5	0.5	5.2
1988	0.3	0.3	3.6	0.4	0.3	4.9
1989	0.3	0.3	3.9	0.4	0.2	5.1

1	1990	0.4	0.3	3.7	0.3	0.4	5.1
	1991	0.5	0.2	3.6	0.4	0.2	4.9
	1992	0.5	0.2	3.5	0.3	0.1	4.6
2	1993	0.4	0.2	3.5	0.3	0.1	4.5
	1994	0.4	0.2	3.3	0.3	0.3	4.5
3	1995	0.5	0.2	3.4	0.3	0.3	4.7
	1996	0.5	0.2	3.2	0.3	0.3	4.5
4	1997	0.4	0.2	3.1	0.3	0.4	4.4
	1998	0.3	0.2	3.4	0.3	0.2	4.4
	1999	0.3	0.2	3.5	0.4	0.3	4.7
5	2000	0.3	0.2	3.5	0.3	0.4	4.7
	2001	0.4	0.2	2.9	0.3	0.4	4.2
6	2002	0.5	0.1	3.1	0.3	0.3	4.3
	2003	0.4	0.1	3.4	0.4	0.3	4.6
7	2004	0.3	0.1	3.3	0.4	0.4	4.5
	2005	0.4	0.1	3.1	0.4	0.3	4.3
8	2006	0.2	0.2	2.9	0.4	0.2	3.9
	2007	0.3	0.2	2.7	0.4	0.3	3.9
9	2008	0.1	0.2	2.8	0.4	0.4	3.9
	2009	0.2	0.2	2.5	0.4	0.4	3.7
10	2010	0.2	0.2	2.7	0.4	0.4	3.9
	2011	0.2	0.2	2.6	0.4	0.4	3.8
11	2012	0.2	0.2	2.4	0.4	0.4	3.6
	2013	0.4	0.2	2.3	0.4	0.4	3.7

30. Given this decline in consumption of the signature PSPs, one would expect rational businesses to reduce the prices for PSPs, but that did not happen. The following chart, taken from data available at the Bureau of Labor Statistics, depicts seasonally adjusted U.S. city average prices for shelf stable fish and seafood from January 2005 through the first part of 2015, with the period 1982-84 used as a baseline.



1 31. One method by which the Defendants collusively raised prices was by
2 decreasing the size of cans of tuna without also decreasing prices. Beginning in
3 August of 2008, Bumble Bee, CoS and StarKist began distributing 5 oz. cans of tuna
4 to replace their 6 oz. cans. The can size change was largely completed in January of
5 2009 and is reflected in the steep climb of prices depicted on the foregoing chart.
6 This was portrayed as a response to rising prices, but it could only have been
7 achieved if Bumble Bee, CoS, and StarKist all agreed to it beforehand.

8 32. Even with this alteration in can size for processed tuna, the Defendants
9 were still unhappy with the prices they obtained. Chris Lischewski, Bumble Bee's
10 President and CEO, publicly complained that canned tuna was "too cheap."

11 33. Bumble Bee, CoS and StarKist jointly sponsored the "Tuna the
12 Wonderfish" advertising campaign of 2011-12 to remedy this issue. This campaign
13 was bankrolled by the Defendants and carried out under the auspices of the National
14 Fisheries Institute's Tuna Council ("Tuna Council") with the support of Thai
15 processors. In it, the Defendants teamed up for marketing purposes. Joe Tuza,
16 Senior Vice-President of Marketing for StarKist, reportedly said that "[w]e worked
17 together surprisingly well." He said further that the campaign, intended to increase
18 consumption of tuna, was based on the hope that "as the water level rises...all boats
19 rise with the tide," referring to the three aforementioned companies. The same
20 philosophy appears to undergird the alleged price-fixing conspiracy.

21 34. The price increases for shelf stable seafood products in recent years are
22 not explained by increases in raw material costs. While the cost per metric ton of
23 skipjack tuna rose in 2012 and early 2013, it declined precipitously thereafter.
24 According to the April 19, 2015 issue of *Tuna Market Intelligence*, "[a]s recently as
25 June last year, skipjack was selling at US\$1,800 in Bangkok. But the price has since
26 plummeted to US\$1,000 since the beginning of the year, with industry officials
27 anticipating further reductions in price this year." Tuna exporters in Ecuador noted
28

1 in January of 2015 that the price per metric ton had declined from \$1400 to \$800.
2 And the United Nations Food & Agriculture Organization noted in its May 2015
3 “Food Outlook” biannual report noted that tuna prices had dropped considerably in
4 2014: “tuna prices declined significantly due to excess supply, with frozen skipjack
5 prices hitting a 6-year low.” Despite these drastically declining raw material costs,
6 Defendants did not decrease prices and try to obtain more market share.

7 35. TUF’s Annual Reports discuss this situation. In its 2013 Annual Report,
8 TUF stated that “our branded tuna business showed resilient growth from 2012
9 thanks to the price adjustments in Europe and *more rational market competition in*
10 *the US.*” (Emphases added). It said in the same report that its future profit margins
11 would depend upon “[r]easonable US canned tuna competition *without unnecessary*
12 *price.*” (Emphases added). In its 2014 Annual Report, TUF explicitly noted that this
13 goal had been achieved. It stated:

14 *Thanks to reduced price competition (absence of cut throat*
15 *pricing) and generally lower fish cost, our own tuna brands*
16 *marked a great year of increased profitability.* Despite
17 minimal sales growth in the US, competitive inventory cost
and reasonable market conditions helped lift the margin of
our US brand. (Emphases added).

18 36. The same report went on to note that “*sensible market competition,*
19 supported by lower raw material costs, made it possible for our own tuna brands to
20 expand their margins through the year despite limited volume growth.” (Emphases
21 added). It indicated that future revenue growth would again be dependent upon
22 “[r]easonable US canned tuna market competition that focuses more on consumption
23 creation than market share alone.” (Emphases added).

24 37. Similarly, Kelly Mayer, a partner in Lion Capital (the owner of Bumble
25 Bee) released a memorandum in December of 2014 to limited partners that stated:

26 With respect to earnings development under our ownership,
27 Bumble Bee maintained and grew gross margins *through*
28 *disciplined pricing actions,* leading to adjusted EBITDA

1 climbing to over \$150 million this year, the highest level of
2 EBITDA in the company's history. (Emphases added).

3 38. The "reasonable market conditions," "more rational market
4 competition," "sensible market competition," avoidance of battles for market share,
5 "absence of cut throat pricing" and pricing "discipline" that the reports and
6 statements note could only have come about through collusion. It would have been
7 against the individual self-interest of each Defendant to eschew increasing market
8 share during this period by lowering prices.

9 39. There were numerous business opportunities for Defendants to meet and
10 engage in such collusion. One such opportunity is provided by the annual Infofish
11 convention held in Bangkok, Thailand during the Class Period. Another was
12 provided by the Tuna Council. As explained on that organization's website:

13 The National Fisheries Institute's Tuna Council represents
14 the largest processors and household names for canned and
15 pouch tuna in the U.S. including *Bumble Bee*®, *Chicken of*
16 *the Sea*® and *StarKist*®. The Tuna Council speaks for the
tuna industry on numerous issues including food safety,
labeling, sustainability, nutrition education and product
marketing.

17 40. Another opportunity to collude was provided through bilateral
18 copacking agreements between Bumble Bee and CoS. Bumble Bee copacks for
19 CoS at the former's plant located in Santa Fe Springs, California with respect to
20 West Coast sales. CoS does the same for Bumble Bee at the former's plant in
21 Georgia with respect to East Coast sales. Thus, even before the proposed merger,
22 these two companies were cooperating closely. These interlocking relationships
23 provided an excellent opportunity to collude on pricing.

24 41. Additionally, starting no later than 2011, Jill Irvin of Bumble Bee,
25 Shue Wing Chan of CoS, and In-Soo Choo of StarKist directly communicated with
26 each other and with the United States Food and Drug Administration concerning,
27 among other matters, the standards for calculating the package weight of tuna
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1 products. Collaborations such as this provided opportunities to meet and engage in
2 anticompetitive conduct.

3 42. And Tri Marine, which dealt with and/or partnered with Bumble Bee,
4 CoS, and StarKist throughout this period provided an excellent conduit for the
5 exchange of price information. On its website, Tri Marine trumpeted its abilities at
6 “market intelligence,” saying that it “maintains commercial relationships with the
7 major decision makers in the tuna industry. We use our access to industry leaders to
8 understand the dynamics of the tuna market and the changing needs of boat owners,
9 processors and brands.” It also trumpeted how it “works closely” with “partners”
10 like CoS and Starkist. Indeed, Renato Curto, President of Tri Marine, has long
11 preached the gospel of “cooperation”:

12 If we are going to specialize and free ourselves to do what
13 we do best, we are all going to have to cooperate with one
14 another more than we ever have. In fact, I see no other issue
as being more immediately important to us here today.
Cooperation is vital to our industry.

15 **CLASS ACTION ALLEGATIONS**

16
17 43. Plaintiff brings this action on its own behalf and as a class action
18 pursuant to Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure on
19 behalf of the following Class (the “Class”):

20 All persons and entities that directly purchased packaged
21 seafood products within the United States, its territories
22 and the District of Columbia from any Defendant or any
23 predecessor, subsidiary or affiliate thereof, at any time
between January 1, 2008 and the present. Excluded from
the class are governmental entities, Defendants, any parent,
24 subsidiary or affiliate thereof, and Defendants’ officers,
directors, employees, and immediate families.

25 44. The Class is so numerous that joinder of all members is impracticable.
26 While the exact number of Class members is unknown at this time, Plaintiff believes
27 that Class members number at least in the thousands and are sufficiently numerous
28

1 and geographically dispersed, so that joinder of all Class members is impracticable.

2 45. Plaintiff's claims are typical of the claims of the other members of the
3 Class. Plaintiff and the members of the Class sustained damages arising out of the
4 common course of conduct of Defendants and their unnamed co-conspirators in
5 violation of law as complained herein. The injuries and damages of each member of
6 the Class were directly caused by the wrongful conduct of Defendants and their co-
7 conspirators in violation of the antitrust laws as alleged herein.

8 46. Plaintiff will fairly and adequately protect the interests of the members
9 of the Class. Plaintiff's interests are coextensive with, and not antagonistic to, those
10 of the other members of the Class and Plaintiff has retained counsel competent and
11 experienced in class action litigation, including antitrust class action litigation.

12 47. Common questions of law and fact exist as to all members of the Class
13 which predominate over any questions affecting solely individual members of the
14 Class. Among the questions of law and fact common to the Class are:

15 (a) Whether Defendants engaged in a combination or conspiracy with their
16 co-conspirators to fix, raise, maintain, and/or stabilize the prices for fares charged
17 for PSPs;

18 (b) Whether the purpose and/or effect of the acts and omissions alleged
19 herein was to restrain trade, or to affect, fix, control, and/or maintain the prices for
20 PSPs;

21 (c) The existence and duration of the horizontal agreements alleged herein
22 to fix, raise, maintain, and/or stabilize the prices for PSPs;

23 (d) Whether Defendants violated Sections 1 and 3 of the Sherman Act, 15
24 U.S.C. §§ 1, 3;

25 (e) Whether Defendants' agents, officers, employees, or representatives
26 participated in correspondence and meetings in furtherance of the illegal conspiracy
27 alleged herein, and, if so, whether such agents, officers, employees, or representatives
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1 were acting within the scope of their authority and in furtherance of Defendants'
2 business interests;

3 (f) Whether, and to what extent, the conduct of Defendants caused injury to
4 Plaintiff and members of the Class, and, if so, the appropriate measure of damages;
5 and

6 (g) Whether Plaintiff and members of the Class are entitled to injunctive
7 relief to prevent the continuation or furtherance of the violation of Sections 1 and 3
8 of the Sherman Act.

9 48. A class action is superior to other available methods for the fair and
10 efficient adjudication of this controversy because joinder of all Class members is
11 impracticable. The prosecution of separate actions by individual members of the
12 Class would impose heavy burdens upon the courts and the Defendants, and would
13 create a risk of inconsistent or varying adjudications of the questions of law and fact
14 common to the Class. A class action, on the other hand, would achieve substantial
15 economies of time, effort and expense, and would assure uniformity of decision as
16 to persons similarly situated without sacrificing procedural fairness or bringing
17 about other undesirable results.

18 49. The interest of members of the Class in individually controlling the
19 prosecution of separate actions is theoretical rather than practical. The Class has a
20 high degree of cohesion, and prosecution of the action through representatives
21 would be unobjectionable. Treatment as a class action will permit a large number of
22 similarly situated persons to adjudicate their common claims in a single forum
23 simultaneously, efficiently, and without the duplication of effort and expense that
24 numerous individual actions would require. The Class is readily definable by
25 objective criteria and one for which records should exist in the files of Defendants.

26 50. This class action presents no difficulties of management that would
27 preclude its maintenance as a class action.
28

TOLLING OF THE STATUTE OF LIMITATIONS

51. Plaintiff had neither actual nor constructive knowledge of the facts constituting its claim for relief.

52. Plaintiff and members of the Class did not discover, and could not have discovered through the exercise of reasonable diligence, the existence of the conspiracy alleged herein until at least July of 2015.

53. Defendants engaged in a secret conspiracy that did not reveal facts that would put Plaintiff or the Class on inquiry notice that there was a conspiracy to fix prices for PSPs. Accordingly, Plaintiff could not have had either actual or constructive knowledge of the price fixing scheme until the public disclosure of the DOJ's criminal investigation.

54. On August 25, 2015, Interim Lead Counsel for Plaintiffs and the Direct Purchaser Class, wrote to Bumble Bee, CoS, and StarKist, requesting information on whether each was the DOJ's amnesty applicant. Interim Lead Counsel further asked for detailed information concerning these Defendants' knowledge of the time frame of the conspiracy, the participants in the conspiracy, the mechanisms used to enforce the conspiracy, the identity of the witnesses with knowledge of the conspiracy, and the location of documents that evidence the existence of the conspiracy. Bumble Bee, CoS, and StarKist refused to respond by September 15, 2015, as requested by Interim Lead Counsel, and to this date continue to refuse to respond.

55. On October 13, 2015, Interim Lead Counsel wrote a further letter to CoS's counsel noting that CoS had not responded to its letter of August 25, 2015 and that Plaintiff now understood that CoS was the "Type B" leniency applicant to the DOJ. Plaintiff invited CoS to respond to Interim Lead Counsel's request for cooperation. As of the filing of this complaint, CoS has not responded.

56. On October 14, 2015, Interim Lead Counsel wrote a letter to Tri Marine requesting its cooperation and sought the same type of information described above

1 with respect to the August 25, 2015 letters sent to Bumble Bee, CoS, and StarKist.
 2 As of the filing of this complaint, Tri Marine has not responded.

3 57. Because Defendants' agreement, understanding and conspiracy was kept
 4 secret, Plaintiff and members of the Class were unaware of Defendants' unlawful
 5 conduct alleged herein and did not know that they were paying artificially high
 6 prices for PSPs during the Class Period.

7 58. Defendants actively misled the public about the price-fixing scheme.
 8 For example, Defendants issued false and misleading announcements concerning the
 9 reasons for their price increases, none of which disclosed that the Defendants had
 10 agreed amongst themselves to fix and raise the price of PSPs. When a party speaks
 11 on a subject matter, it must speak the whole truth.

12 59. No Defendant has yet publicly disclosed its participation in an
 13 agreement among themselves to fix and/or raise the price of PSPs.

14 **COUNT I**

15 **Violation of Sections 1 and 3 of the Sherman Act (15 U.S.C. §§ 1, 3)**

16 60. Plaintiff incorporates by reference the preceding paragraphs as if fully
 17 set forth herein.

18 61. Defendants and their co-conspirators engaged in a continuing contract,
 19 combination, and conspiracy to artificially fix, raise, maintain, and/or stabilize the
 20 prices of PSPs within the United States, its territories, and the District of Columbia
 21 in violation of Sections 1 and 3 of the Sherman Act (15 U.S.C. §§ 1, 3).

22 62. Defendants and their co-conspirators agreed to, and did in fact, restrain
 23 trade or commerce by fixing, raising, maintaining, and/or stabilizing at artificial and
 24 non-competitive levels, the prices of such PSPs.

25 63. In formulating and effectuating their contract, combination or conspiracy,
 26 Defendants and their co-conspirators engaged in anticompetitive activities, the
 27 purpose and effect of which were to artificially fix, raise, maintain and/or stabilize
 28

1 the price of PSPs.

2 64. The illegal combination and conspiracy alleged herein had the following
3 effects, among others:

4 a. The prices charged by Defendants to, and paid by, Plaintiff and
5 members of the Class for PSPs were fixed, raised, maintained and/or stabilized at
6 artificially high and non-competitive levels;

7 b. Plaintiff and members of the Class have been deprived of free and open
8 competition in the purchase of PSPs;

9 c. Plaintiff and members of the Class have been required to pay more for
10 PSPs than they would have paid in a competitive marketplace absent Defendants'
11 price-fixing conspiracy;

12 d. Competition in the sale of PSPs has been restrained, suppressed or
13 eliminated;

14 65. As a direct and proximate result of Defendants' conduct, Plaintiff and
15 members of the Class have been injured and damaged in their business and property
16 in an amount to be determined according to proof.

17 66. Plaintiff and members of the Class are each entitled to treble damages
18 for the violations of the Sherman Act alleged herein.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff prays:

21 A. That the Court determine that this action may be maintained as a class
22 action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure and
23 direct that reasonable notice of this action, as provided by Rule 23(c)(2) of the
24 Federal Rules of Civil Procedure, be given to members of the Class;

25 B. That the Court adjudge and decree that the contract, combination and
26 conspiracy alleged herein is a *per se* unreasonable restraint of trade in violation of
27 Section 1 of the Sherman Act;
28

1 C. That the Court enter judgment against Defendants, jointly and severally,
2 in favor of Plaintiff and the Class;

3 D. That the Court award Plaintiff and the Class treble damages;

4 E. That the Court award Plaintiff and the Class attorneys' fees and costs as
5 well as pre-judgment and post-judgment interest as permitted by law;

6 F. That Defendants and their co-conspirators, their respective successors,
7 assigns, parents, subsidiaries, affiliates and transferees, and their respective officers,
8 directors, agents and employees, and all other persons acting or claiming to act on
9 behalf of Defendants or their co-conspirators, or in concert with them, be permanently
10 enjoined and restrained from, in any manner, directly or indirectly, continuing,
11 maintaining or renewing the combination, conspiracy, agreement, understanding or
12 concert of action, or adopting any practice, plan, program or design having a similar
13 purpose or affect in restraining competition; and

14 G. That the Court award Plaintiff and the Class such other and further relief
15 as may be deemed necessary and appropriate.

16 Dated: March 14, 2016

Respectfully submitted,

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