

KIMBERLY A. KRALOWEC (Cal. Bar No. 163158)
KATHLEEN STYLES ROGERS (Cal. Bar No. 122853)
CHAD A. SAUNDERS (Cal. Bar No. 257810)
THE KRALOWEC LAW GROUP
44 Montgomery St., Suite 1210
San Francisco, CA 94104
Telephone: (415) 546-6800
Facsimile: (415) 546-6801
Email: kkralowec@kraloweclaw.com
krorgers@kraloweclaw.com
csaunders@kraloweclaw.com

Counsel for Plaintiff and the Class

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

COLIN MOORE, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

BUMBLE BEE FOODS LLC,
TRI-UNION SEAFOODS LLC, and
STARKIST COMPANY,

Defendants.

Case No. **'15CV1911 DMS NLS**

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Colin Moore, by and through his undersigned attorneys, on behalf of himself and all others similarly situated, complains and alleges as follows. All allegations herein other than those relating directly to Plaintiff are based on information and belief.

NATURE OF THE ACTION

1. This action arises out of a conspiracy by the three largest producers of packaged seafood products ("PSPs") in the United States, its territories and the District of Columbia—Bumble Bee Foods LLC, Tri-Union Seafoods LLC, and

1 StarKist Company (collectively, “Defendants”)—which began no later than July 24,
2 2011, and continues to the present (the “Class Period”), to fix, raise, maintain,
3 and/or stabilize prices for PSPs within the United States, its territories and the
4 District of Columbia in violation of Section 1 of the Sherman Antitrust Act (15
5 U.S.C. § 1). As used herein, the term “PSPs” refers to shelf-stable seafood products
6 (predominantly tuna) that are sold in cans, pouches or ready-to-eat serving
7 packages.

8 **JURISDICTION AND VENUE**

9 2. Plaintiff, on behalf of himself and all indirect purchasers, brings this
10 action under Section 1 of the Sherman Act, 15 U.S.C. §1, and Section 16 of the
11 Clayton Act, 15 U.S.C. § 26, to obtain injunctive relief against all Defendants.
12 Plaintiff, on behalf of himself and all indirect purchasers, also brings this action
13 pursuant to the antitrust laws of the State of Hawaii (Hawaii Rev. Stat. §§ 480 et
14 seq.) and the consumer protection laws of the State of Hawaii (Hawaii Rev. Stat. §§
15 480-2 et seq.) to recover damages, restitution, disgorgement, attorneys’ fees, costs
16 of suit, and all other available relief.

17 3. The Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and
18 1337 over Plaintiff’s claims under Section 1 of the Sherman Act and Sections 4 and
19 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26. This Court has supplemental
20 jurisdiction over Plaintiff’s state-law claims under 28 U.S.C. §1367. The state-law
21 claims are so related to Plaintiff’s claims under Section 1 of the Sherman Act and
22 Sections 4 and 16 of the Clayton Act that they form part of the same case or
23 controversy.

24 4. This Court also has subject matter jurisdiction over the state law
25 claims pursuant to the Class Action Fairness Act of 2005, which confers federal
26 jurisdiction over any class action in which “any member of a class of plaintiffs is a
27 citizen of a State different from any defendant” and “in which the matter in
28

1 controversy exceeds the sum or value of \$5,000,000, exclusive of interest and
2 costs.” 28 U.S.C. §1332(d)(2)(A).

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

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

15 **PLAINTIFF**

16 7. Plaintiff Colin Moore is a current resident of the State of Hawaii.
17 During the Class Period, Plaintiff indirectly purchased PSPs from one of more of
18 the Defendants and has suffered pecuniary injury as a result of the antitrust
19 violations alleged herein.

20 **DEFENDANTS**

21 8. Defendant Bumble Bee Foods LLC (“Bumble Bee”) is a domestic
22 corporation with its principal place of business located at 9655 Granite Ridge
23 Drive, Suite 100, San Diego CA 92123. Bumble Bee produces and sells PSPs
24 throughout the United States (including this District), its territories and the District
25 of Columbia. Bumble Bee is privately owned by Lion Capital LLP (“Lion”), based
26 in the United Kingdom.

27 9. Defendant Tri-Union Seafoods LLC, dba Chicken of the Sea
28

1 International, is a domestic corporation with its principal place of business located
2 at 9330 Scranton Road, San Diego CA 92121. Tri-Union Seafoods LLC produces
3 and sells PSPs throughout the United States (including this District), its territories
4 and the District of Columbia. Unless otherwise indicated, Tri-Union Foods LLC
5 will be referred to herein as “CoS”. CoS is owned by Thai Union Frozen Products
6 (“TUF”), a company based in Thailand.

7 10. Defendant StarKist Company (“StarKist”) is a domestic corporation
8 with its headquarters at 225 North Shore Drive, Suite 400, Pittsburgh PA 15212.
9 StarKist produces and sells PSPs throughout the United States (including this
10 District), its territories and the District of Columbia. StarKist is privately owned by
11 Dongwon Industries (“Dongwon”), based in South Korea.

12 **UNNAMED CO-CONSPIRATORS**

13 11. On information and belief, at all relevant times, other producers of
14 PSPs willingly conspired with Defendants in their unlawful restraint of trade. All
15 averments herein against Defendants are also averred against these unnamed co-
16 conspirators.

17 **AGENTS**

18 12. The acts alleged to have been done by Defendants were authorized,
19 ordered, or performed by their directors, officers, managers, agents, employees, or
20 representatives while actively engaged in the management of Defendants’ affairs.

21 **INTERSTATE TRADE AND COMMERCE**

22 13. Throughout the Class Period, there was a continuous and uninterrupted
23 flow of invoices for payment, payments, and other documents essential to the sale
24 of PSPs in interstate commerce between and among offices of Defendants and their
25 customers located throughout the United States, its territories and the District of
26 Columbia.

27 14. Throughout the Class Period, Defendants transported substantial
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1 amounts of PSPs in a continuous and uninterrupted flow of interstate commerce
2 throughout the United States, its territories and the District of Columbia.

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

7 **FACTUAL ALLEGATIONS**

8 16. PSPs are sold to club warehouses, retail groceries, grocery
9 cooperatives, mass merchandisers, and drug stores, among others, who then resell
10 PSPs to consumers. According to a May 2012 presentation by Bumble Bee, total
11 United States retail sales of shelf-stable seafood products were \$2.346 billion in
12 2011 and were estimated to be \$2.397 billion in 2012. In one report, Bumble Bee
13 estimated that canned tuna represents 73% of this value. In the same report, Bumble
14 Bee estimated that total United States retail sales of shelf-stable tuna were \$1.719
15 billion in 2011 and were estimated to be \$1.750 billion in 2012.

16 17. Defendants are the three largest domestic manufacturers of PSPs. The
17 industry is highly concentrated. According to the aforementioned presentation by
18 Bumble Bee, it had 29% of the domestic shelf-stable seafood market, CoS had
19 18.4% and StarKist had 25.3%. The remaining market share was comprised of
20 smaller companies and private label brands. With respect to shelf-stable tuna,
21 StarKist had 34.6% of the market, Bumble Bee had 27.8% and CoS had 19.4%. In
22 December of 2014, the *Wall Street Journal* reported that the Defendants' respective
23 shares of the domestic market for canned tuna were 13% for CoS, 25% for Bumble
24 Bee, and 36% for StarKist. Bualuang Securities reported the shares for the domestic
25 canned tuna market slightly differently, with StarKist at 30%, Bumble Bee at 28%
26 and CoS at 20%.

27 18. This oligopolistic structure within the industry is the result of recent
28

1 mergers and acquisitions. For example, in 1997, Van Camp Seafood Company
2 (“Van Camp”) was acquired by the investment group Tri-Union Seafoods LLC, of
3 which TUF was a member. Thereafter, TUF bought out the other investors to
4 acquire Van Camp completely, which it renamed Chicken of the Sea International,
5 an entity that was later merged into Tri-Union Seafoods LLC. In 2008, Dongwon
6 acquired StarKist from Del Monte Foods for \$363 million. Similarly, in 2014, TUF
7 bought King Oscar, a Norwegian sardine canner that sold 37% of its products in the
8 United States. And in December of 2014, TUF announced the acquisition from
9 Lion (subject to regulatory approval) of Bumble Bee for \$1.51 billion. The
10 combination of CoS and Bumble Bee would have created a virtual duopoly, with
11 the combined entity substantially exceeding the market share of StarKist. TUF had
12 planned to finance the acquisition partly through a preferential public offering to
13 existing shareholders that would have raised approximately \$380 million.

14 19. On July 23, 2015, TUF suspended the preferential public offering in
15 light of a grand jury investigation commenced by the Antitrust Division of the
16 United States Department of Justice (“DOJ”). TUF disclosed on that day that both
17 Bumble Bee and CoS had received grand jury subpoenas relating to an antitrust
18 investigation of PSPs. The publication *Undercurrent News* further reported in an
19 article dated that same day that “Thai Union held a conference with analysts on the
20 suspension of the share offer, in which the company’s management said other US
21 seafood producers have also received a subpoena requiring the production of
22 relevant information to the DOJ.” The publication *Global Competition Review*
23 similarly reported as follows:

24 In a letter to the Bangkok stock exchange on Wednesday,
25 Thai Union chairman Kraisorn Chansiri confirmed that
26 the US Department of Justice is investigating his
27 company’s sector, causing Thai Union to suspend a stock
28 issuance that had been intended to finance the \$1.5
billion acquisition of Bumble Bee.

He said the Thai Union subsidiary Tri-Union Seafoods,
which operates in the US under the Chicken of the Sea

brand, had received a subpoena “requiring Tri-Union to provide relevant information to the DoJ in relation to an antitrust investigation of the packaged seafood industry in the United States.”

20. The article goes on to state:

An industry expert said the subpoena does not appear to be limited to the merger review, and early information indicates the demand for information came from a separate section of the antitrust division, not one tasked with analysing deals.

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.

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

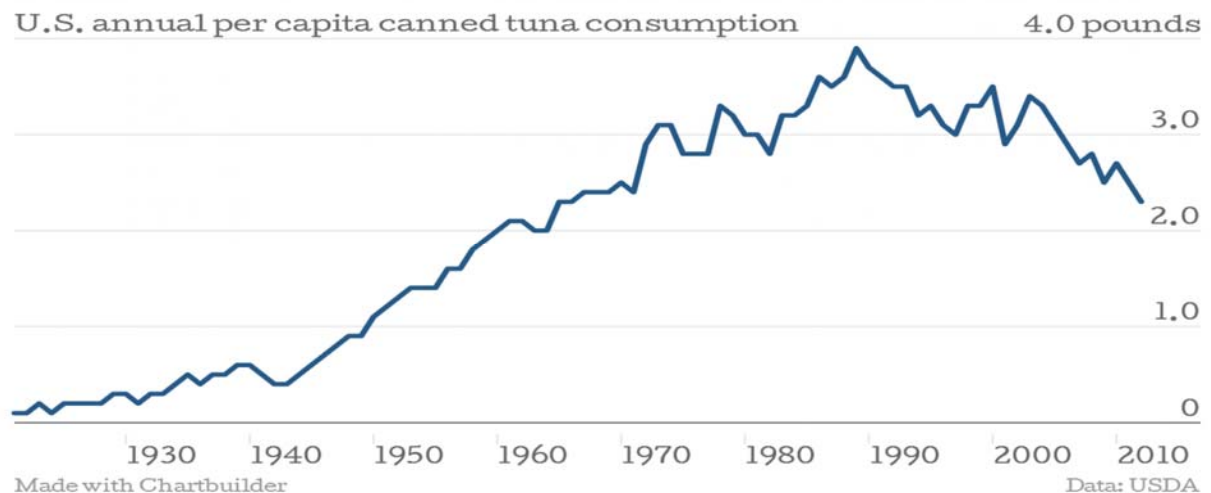
21. Based on these statements, it appears that StarKist received a subpoena as well and that the DOJ’s investigation extends to the entire domestic PSP sector.

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

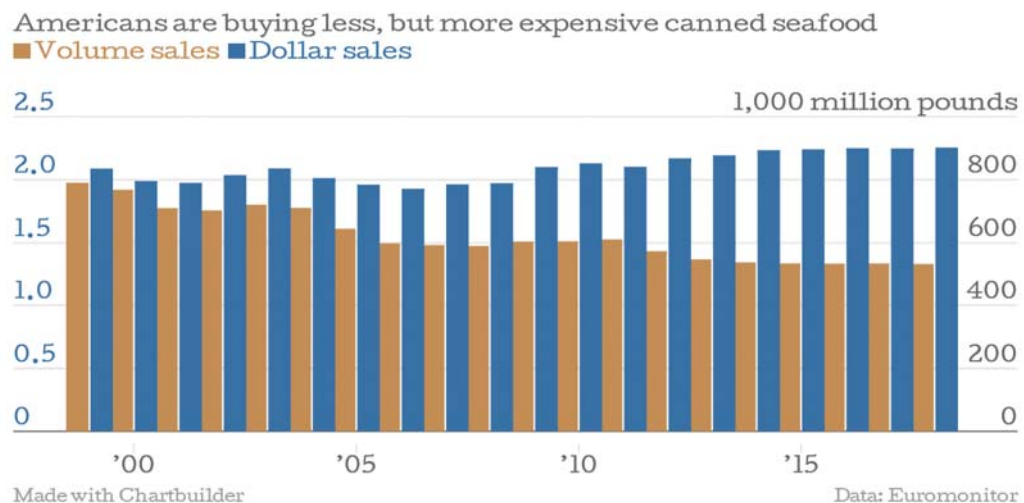
where venue lies for the offense, such as a district from or to which price-fixed sales were made or where conspiratorial communications occurred.” *Id.*

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

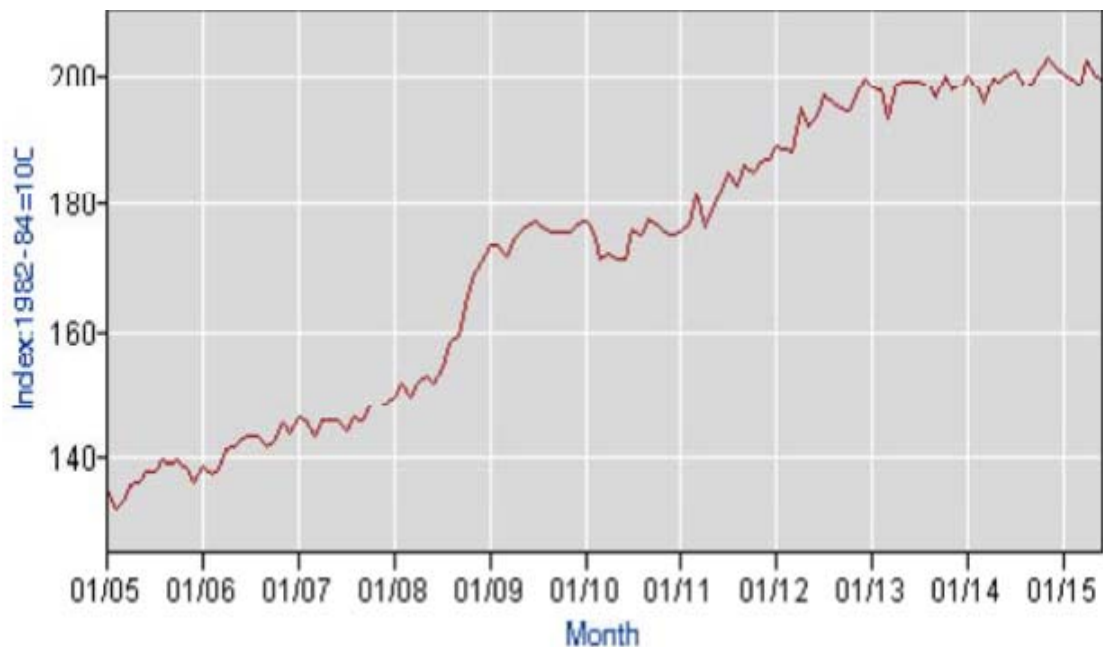
24. Consumption of PSPs, particularly canned tuna, has declined over the last ten years in the United States. The annual consumption per person was 3.1 lbs. in 2005, but had fallen to 2.3 lbs. in 2013. An article in the *Washington Post* graphically represented this decline by measuring United States 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:



27. Given this decline in consumption of the signature PSP, 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.



28. Raw material costs do not adequately explain these price increases. While the cost per metric ton of skipjack tuna rose in 2012 and early 2013, it declined precipitously thereafter. According to the April 19, 2015 issue of *Tuna Market Intelligence*, “[a]s recently as June last year, skipjack was selling at US\$1,800 in Bangkok. But the price has since plummeted to US\$1,000 since the beginning of the year, with industry officials anticipating further reductions in price this year.” Tuna exporters in Ecuador noted in January of 2015 that the price per metric ton had declined from \$1400 to \$800. And the United Nations Food & Agriculture Organization noted in its May 2015 “Food Outlook” biannual report noted that tuna prices had dropped considerably in 2014: “tuna prices declined

1 significantly due to excess supply, with frozen skipjack prices hitting a 6-year low.”
2 Despite these drastically declining raw material costs, Defendants did not decrease
3 prices and try to obtain more market share.

4 29. TUF’s Annual Reports discuss this situation. In its 2013 Annual
5 Report, TUF stated that “our branded tuna business showed resilient growth from
6 2012 thanks to the price adjustments in Europe and *more rational market*
7 *competition in the US.*” (Emphases added). It said in the same report that its future
8 profit margins would depend upon “[r]easonable US canned tuna competition
9 without unnecessary price.” (Emphases added). In its 2014 Annual Report, TUF
10 explicitly noted that this goal had been achieved. It stated:

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

15 The same report went on to note that “*sensible market competition*, supported by
16 lower raw material costs, made it possible for our own tuna brands to expand their
17 margins through the year despite limited volume growth.” (Emphases added). It
18 indicated that future revenue growth would again be dependent upon “[r]easonable
19 *US canned tuna market competition that focuses more on consumption creation*
20 *than market share alone.*” (Emphases added). The “reasonable market conditions”,
21 “more rational market competition”, “sensible market competition”, avoidance of
22 battles for market share and “absence of cut throat pricing” that the reports note
23 could only have come about through collusion. It would have been against the
24 individual self-interest of each Defendant to eschew increasing market share during
25 this period by lowering prices.

26 30. There were numerous business opportunities for Defendants to meet
27 and engage in such collusion. One such opportunity is provided by the Tuna
28

1 Council. As explained on that organization's website:

2 The National Fisheries Institute's Tuna Council
3 represents the largest processors and household names
4 for canned and pouch tuna in the U.S. including *Bumble*
5 *Bee®*, *Chicken of 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.

6 31. An example of such joint conduct is provided by the "Tuna the
7 Wonderfish" advertising campaign of 2011-12. This campaign was bankrolled by
8 the Defendants and carried out under the auspices of the Tuna Council with the
9 support of Thai processors. In it, the Defendants teamed up for marketing purposes.
10 Joe Tuza, Senior Vice-President of Marketing for StarKist, reportedly said that
11 "[w]e worked together surprisingly well." He said further that the campaign,
12 intended to increase consumption of tuna, was based on the hope that "as the water
13 level rises...all boats rise with the tide," referring to the three Defendant
14 companies. The same philosophy appears to undergird the alleged price-fixing
15 conspiracy.

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

23 **FRAUDULENT CONCEALMENT AND TOLLING**

24 33. Plaintiff and members of the Classes did not discover and could not
25 discover through the exercise of reasonable diligence the existence of the
26 combination and conspiracy alleged herein until shortly before this litigation
27 commenced.
28

1 34. As indirect purchasers of PSPs manufactured by defendants, Plaintiffs
2 and the members of the Classes had no direct contact or interaction with
3 Defendants, and therefore no means from which they could have discovered the
4 combination and conspiracy alleged in this Complaint until shortly before the
5 lawsuit was filed.

6 35. It was not until approximately July 23, 2015 that information first
7 became publicly available that Defendants engaged in the combination and
8 conspiracy alleged herein. That is when the DOJ's ongoing investigation and grand
9 jury subpoenas described above were first publicly disclosed, and when TUF
10 announced that it was suspending its preferential public offering because of the
11 pending investigation. Prior to that date, Plaintiffs and members of the Classes had
12 no reason to suspect that any combination or conspiracy had been formed.

13 36. By their very nature, price-fixing conspiracies tend to be inherently
14 self-concealing. Plaintiff is informed and believes that Defendants agreed among
15 themselves to conceal their unlawful conspiracy, including by agreeing not to
16 discuss the conspiracy publicly and by other means of avoiding detection and
17 maintaining secrecy. Accordingly, a reasonable person under the circumstances
18 would not have been alerted to any irregularity with regard to PSP prices before late
19 July 2015 at the earliest, and Plaintiff and members of the Classes could not have
20 discovered the alleged contract, conspiracy, or combination at an earlier date by the
21 exercise of reasonable diligence.

22 37. As a result of the Discovery Rule and Defendants' fraudulent
23 concealment of their conspiracy, the running of any statute of limitations has been
24 tolled with respect to any claims that Plaintiff and members of the Classes have as a
25 result of the anticompetitive conduct alleged in this Complaint.

26 **CLASS ACTION ALLEGATIONS**

27 38. Plaintiff brings this action on his own behalf and as a class action
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1 pursuant to Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure on
2 behalf of the following Class (the “Nationwide Class”):

3 All persons and entities that indirectly purchased
4 packaged seafood products within the United States, its
5 territories and the District of Columbia from any
6 Defendant or any predecessor, subsidiary or affiliate
7 thereof, at any time between January 1, 2005 and the
8 present. Excluded from the class are governmental
9 entities, Defendants, any parent, subsidiary or affiliate
10 thereof, and Defendants’ officers, directors, employees,
11 and immediate families.

12 39. Plaintiff also brings this action on his own behalf and as a class action
13 pursuant to Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure on
14 behalf of the following Class (the “Hawaii Indirect Purchaser Class”):

15 All persons and entities that indirectly purchased
16 packaged seafood products within Hawaii from any
17 Defendant or any predecessor, subsidiary or affiliate
18 thereof, at any time between January 1, 2005 and the
19 present. Excluded from the class are governmental
20 entities, Defendants, any parent, subsidiary or affiliate
21 thereof, and Defendants’ officers, directors, employees,
22 and immediate families.

23 40. Plaintiff does not know the exact number of members of the Class
24 because such information is in the exclusive control of Defendants. Due to the
25 nature of the trade and commerce involved, however, Plaintiff believes that Class
26 members number at least in the thousands and are sufficiently numerous and
27 geographically dispersed throughout the United States, its territories and the
28 District of Columbia so that joinder of all Class members is impracticable.

41. There are questions of law and fact which are common to the claims of
Plaintiff and the Class, including, but not limited to:

a. Whether Defendants engaged in a combination or conspiracy
with their co-conspirators to fix, raise, maintain, and/or stabilize the prices for
PSPs;

b. Whether the purpose and/or effect of the acts and omissions

1 alleged herein was to restrain trade, or to affect, fix, control, and/or maintain the
2 prices for PSPs;

3 c. The existence and duration of the horizontal agreements alleged
4 herein to fix, raise, maintain, and/or stabilize the prices for PSPs;

5 d. Whether Defendants violated Section 1 of the Sherman Act (15
6 U.S.C. § 1);

7 e. Whether Defendants violated the antitrust laws of the State of
8 Hawaii (Hawaii Rev. Stat. §§ 480 et seq.);

9 f. Whether Defendants violated the consumer protection laws of
10 the State of Hawaii (Hawaii Rev. Stat. §§ 480-2 et seq.);

11 g. Whether Defendants' agents, officers, employees, or
12 representatives participated in correspondence and meetings in furtherance of the
13 illegal conspiracy alleged herein, and, if so, whether such agents, officers,
14 employees, or representatives were acting within the scope of their authority and in
15 furtherance of Defendants' business interests;

16 h. Whether, and to what extent, the conduct of Defendants caused
17 injury to Plaintiff and members of the Class, and, if so, the appropriate measure of
18 damages; and

19 i. Whether Plaintiff and members of the Class are entitled to
20 injunctive relief to prevent the continuation or furtherance of the violation of
21 Section 1 of the Sherman Act, the Hawaii antitrust laws, or the Hawaii consumer
22 protection laws.

23 42. Plaintiff's claims are typical of the claims of the members of the Class.

24 43. Plaintiff will fairly and adequately assert and protect the interests of
25 the Class. Plaintiff's interests are coincident with, and not antagonistic to, those of
26 the other members of the Class.

27 44. Plaintiff is represented by counsel competent and experienced in the
28

1 prosecution of antitrust and class action litigation.

2 45. The questions of law and fact common to the members of the Class
3 predominate over any questions affecting only individual members.

4 46. A class action is superior to other available methods for the fair and
5 efficient adjudication of this controversy because:

6 a. The prosecution of separate actions by individual members of
7 the Class would create a risk of inconsistent or varying adjudications, establishing
8 incompatible standards of conduct for Defendants.

9 b. The Class is readily definable and one for which records should
10 exist in the files of Defendants.

11 c. Prosecution as a class action will eliminate the possibility of
12 repetitious litigation.

13 d. Treatment as a class action will permit a large number of
14 similarly situated persons to adjudicate their common claims in a single forum
15 simultaneously, efficiently, and without the duplication of effort and expense that
16 numerous individual actions would require.

17 e. Class treatment will permit the adjudication of relatively small
18 claims by many Class members who otherwise could not afford to litigate an
19 antitrust claim such as is asserted in this complaint on an individual basis.

20 47. This class action presents no difficulties of management that would
21 preclude its maintenance as a class action.

22 **COUNT I**

23 **Violation of Section 1 of the Sherman Act (15 U.S.C. § 1)**

24 **(On Behalf of Plaintiff and the Nationwide Class)**

25 48. Plaintiff incorporates by reference the preceding paragraphs as if fully
26 set forth herein.

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

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

7 51. In formulating and effectuating their contract, combination or
8 conspiracy, Defendants and their co-conspirators engaged in anticompetitive
9 activities, the purpose and effect of which were to artificially fix, raise, maintain
10 and/or stabilize the price of PSPs.

11 52. The illegal contract, combination, or conspiracy alleged herein had the
12 following effects, among others:

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

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

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

21 d. Competition in the sale of PSPs has been restrained, suppressed
22 or eliminated.

23 53. During the Class Period, Plaintiff and the other members of the
24 Nationwide Class purchased PSPs indirectly from Defendants, or their subsidiaries,
25 agents, and/or affiliates, and by reason of Defendants' contract, combination or
26 conspiracy alleged above, paid more for such products than they would have paid in
27 the absence of such conduct.
28

54. Defendants' conduct, combination or conspiracy alleged herein is a *per se* violation of section 1 of the Sherman Act, and is ongoing and will continue unless enjoined by the Court.

55. Pursuant to Section 16 of the Clayton Act (15 U.S.C. §26), Plaintiff and the other members of the Nationwide Class are entitled to equitable and injunctive relief.

COUNT II

Violation of Hawaii Antitrust Laws (Hawaii Rev. Stat. §§480 et seq.)

(On Behalf of Plaintiff and the Hawaii Indirect Purchaser Class)

56. Plaintiff incorporates by reference each paragraph set forth above.

57. The contract, combination, or conspiracy alleged above violates Hawaii Rev. Stat. §480-4(a), which prohibits, *inter alia*, every contract, combination or conspiracy "in restraint of trade or commerce in the State"; and Hawaii Rev. Stat. §480-4(b)(1), which, *inter alia*, makes it unlawful to "fix, control or maintain the price of any commodity." Defendants' PSPs are "commodities" within the meaning of Hawaii Rev. Stat. §480-1, which includes "goods" and "merchandise." Defendants' combinations or conspiracies restrained, suppressed and eliminated price competition for PSPs in Hawaii, restrained trade and commerce in Hawaii, and caused the prices of PSPs to be raised, fixed, maintained and stabilized at supracompetitive levels, in violation of Hawaii antitrust laws.

58. During the Class Period, Plaintiff and the other members of the Hawaii Indirect Purchaser Class purchased PSPs indirectly from Defendants, or their subsidiaries, agents, and/or affiliates, and, by reason of Defendants' contract, combination or conspiracy alleged above, paid more for such products than they would have paid in the absence of such conduct. As a result, Plaintiff and the other members of the Hawaii Indirect Purchaser Class have sustained injury and are entitled to all relief available under Hawaii Rev. Stat. §§480 et seq., including but

1 not limited to damages in an amount to be determined at trial, along with attorneys’
2 fees and costs of suit.

3 59. In compliance with Hawaii Rev. Stat. §480-13.3(a)(1), a copy of this
4 Complaint has been served on the Hawaii Attorney General or shall be served
5 within seven days after the Complaint is filed.

6 **COUNT III**

7 **Violation of Hawaii Consumer Protection Laws**
8 **(Hawaii Rev. Stat. §§480 et seq.)**

9 **(On Behalf of Plaintiff and the Hawaii Indirect Purchaser Class)**

10 60. Plaintiff incorporates by reference each paragraph set forth above.

11 61. The contract, combination or conspiracy alleged above constitutes
12 “unfair methods of competition and unfair or deceptive acts or practices in the
13 conduct of any trade or commerce,” within the meaning of Hawaii Rev. Stat. § 480-
14 2(a). Defendants’ combinations or conspiracies restrained, suppressed and
15 eliminated price competition for PSPs in Hawaii, restrained trade or commerce for
16 PSPs in Hawaii, and caused the prices of PSPs to be raised, fixed, maintained and
17 stabilized at supra-competitive levels, all in violation of Hawaii Rev. Stat. § 480-
18 2(a).

19 62. As a result of Defendants’ violations of Hawaii Rev. Stat. § 480-2(a),
20 Plaintiff and members of the Hawaii Indirect Purchaser Class paid more for PSPs
21 than they would have in the absence of Defendants’ violations. Plaintiff and
22 members of the Hawaii Indirect Purchaser Class are therefore entitled to damages,
23 including treble damages under Hawaii Rev. Stat. § 480-13(b)(1), from Defendants
24 in an amount to be determined at trial, along with attorneys’ fees and costs of suit,
25 as well as all other relief allowable by law.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff prays:

28 A. That the Court determine that this action may be maintained as a class

1 action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure and
2 direct that reasonable notice of this action, as provided by Rule 23(c)(2) of the
3 Federal Rules of Civil Procedure, be given to members of the Class;

4 B. That the Court adjudge and decree that the contract, combination or
5 conspiracy alleged herein is a *per se* unreasonable restraint of trade in violation of
6 Section 1 of the Sherman Act and the antitrust laws of Hawaii (including Hawaii
7 Rev. Stat. § 480-4);

8 C. That the Court adjudge and decree that the contract, combination or
9 conspiracy alleged herein is an “unfair method of competition” and/or an “unfair
10 and deceptive act or practice” within the meaning of Hawaii Rev. Stat. § 480-2(a);

11 D. That the Court enter judgment against Defendants, jointly and
12 severally, in favor of Plaintiff and the Class;

13 E. That the Court award Plaintiff and the Class damages, including treble
14 damages pursuant to Hawaii Rev. Stat. § 480-13(b)(1);

15 F. That the Court award Plaintiff and the Class attorneys’ fees and costs
16 as well as pre-judgment and post-judgment interest as permitted by law;

17 G. That Defendants and their co-conspirators, their respective successors,
18 assigns, parents, subsidiaries, affiliates and transferees, and their respective officers,
19 directors, agents and employees, and all other persons acting or claiming to act on
20 behalf of Defendants or their co-conspirators, or in concert with them, be
21 permanently enjoined and restrained from, in any manner, directly or indirectly,
22 continuing, maintaining or renewing the combination, conspiracy, agreement,
23 understanding or concert of action, or adopting any practice, plan, program or
24 design having a similar purpose or affect in restraining competition; and

25 H. That the Court award Plaintiff and the Class such other and further
26 relief as may be deemed necessary and appropriate.

1 DATED: August 28, 2015

2 By: /s/ Kimberly A. Kralowec
3 Kimberly A. Kralowec (Cal. Bar No. 163158)
4 Kathleen Styles Rogers (Cal. Bar No. 122852)
5 Chad A. Saunders (Cal. Bar No. 257810)
6 THE KRALOWEC LAW GROUP
7 44 Montgomery Street, Suite 1210
8 San Francisco, CA 94104
9 Telephone: 415-546-6800
10 Facsimile: 415-546-6801
11 Email: kkralowec@kraloweclaw.com
12 krogers@kraloweclaw.com
13 csaunders@kraloweclaw.com

14 Counsel for Plaintiff Colin Moore and the Putative
15 Class

16 **DEMAND FOR JURY TRIAL**

17 Plaintiff, on behalf of himself and all others similarly situated, demands a
18 trial by jury of all claims so triable.

19 DATED: August 28, 2015

20 By: /s/ Kimberly A. Kralowec
21 Kimberly A. Kralowec (Cal. Bar No. 163158)
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24 THE KRALOWEC LAW GROUP
25 44 Montgomery Street, Suite 1210
26 San Francisco, CA 94104
27 Telephone: 415-546-6800
28 Facsimile: 415-546-6801
Email: kkralowec@kraloweclaw.com
krogers@kraloweclaw.com
csaunders@kraloweclaw.com

Counsel for Plaintiff Colin Moore and the Putative
Class