

1 Michael P. Lehmann (Cal. Bar No. 77152)  
 2 Bonny E. Sweeney (Cal. Bar No. 176174)  
 3 Christopher L. Lebsack (Cal. Bar No. 184546)  
 4 HAUSFELD LLP  
 5 600 Montgomery Street, Suite 3200  
 6 San Francisco, CA 94111  
 7 Tel: (415) 633-1908  
 8 Fax: (415) 358-4980  
 9 E-mail: mlehmann@hausfeld.com  
 10 E-mail: bsweeney@hausfeld.com  
 11 E-mail: clebsack@hausfeld.com

12 Michael D. Hausfeld  
 13 HAUSFELD LLP  
 14 1700 K Street NW, Suite 650  
 15 Washington, DC 20006  
 16 Telephone: (202) 540-7200  
 17 Facsimile: (202) 540-7201  
 18 E-mail: mhausfeld@hausfeld.com

19 *Counsel for Olean Wholesale Grocery Cooperative, Inc.*  
 20 *and Interim Lead Counsel for the Proposed Direct Purchaser Class*  
 21 [Additional Counsel Listed on Signature Page]

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

24 IN RE: PACKAGED SEAFOOD  
 25 PRODUCTS ANTITRUST LITIGATION

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

27 **CONSOLIDATED DIRECT**  
 28 **PURCHASER CLASS**  
**COMPLAINT**

This filing relates to the Direct Purchaser  
 Plaintiff Class Action Track

JURY TRIAL DEMANDED

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF CONTENTS**

I. NATURE OF THE ACTION..... 1

II. JURISDICTION AND VENUE. .... 2

III. PLAINTIFFS..... 3

IV. DEFENDANTS..... 4

    A. Bumble Bee..... 4

    B. Thai Union Group And Tri-Union. .... 5

    C. Dongwon And StarKist. .... 8

V. AGENTS..... 13

VI. INTERSTATE TRADE AND COMMERCE. .... 13

VII. FACTUAL ALLEGATIONS..... 13

    A. The Nature Of, Concentration Of, And Consolidation In The Domestic PSP Market..... 13

        1. Nature of the Domestic PSP Market..... 13

        2. Concentration In The Domestic PSP Market..... 17

        3. Consolidation In The Domestic PSP Market..... 17

        4. Barriers To Entry In The Domestic PSP Market. .... 18

    B. Demand, Supply, And Pricing in the Domestic PSP Market..... 19

        1. The Oversupply of Tuna. .... 19

        2. Price Declines In Raw Skipjack Due To Oversupply..... 21

        3. Declining Domestic Consumption Of Canned Tuna. .... 21

        4. Domestic Pricing Of Canned Tuna. .... 23

    C. DOJ’s Criminal Investigation Reveals That The Pricing for PSPs Produced By Defendants Was The Result of Collusion. .... 25

    D. Methods By Which Defendants Effectuated Their Collusive Scheme..... 29

        1. Collusion On Can Size Changes. .... 30

        2. Collusion On List Price Increases..... 31

        3. Collusion On Promotional Activity. .... 33

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

4. Collusion On Offering of “FAD Free” Branded Tuna Products. .... 33

5. Other Opportunities To Collude. .... 34

E. Involvement Of High Level Executives In The Conspiracy..... 36

F. Foreign Parents’ Recognition Of The Conspiracy And Its Results. .... 38

VIII. CLASS ACTION ALLEGATIONS ..... 40

IX. TOLLING OF THE STATUTE OF LIMITATIONS..... 42

X. CAUSE OF ACTION. .... 44

XI. PRAYER FOR RELIEF..... 45

XII. JURY DEMAND ..... 46

1 Plaintiffs, by and through their undersigned attorneys, complain and allege as  
2 follows. All allegations herein other than those relating directly to Plaintiffs are  
3 based on information and belief.

4 **I. NATURE OF THE ACTION.**

5 1. This action arises out of a conspiracy by the three largest domestic  
6 producers (Bumble Bee Foods LLC, Tri-Union Seafoods LLC, and StarKist  
7 Company--along with certain parent entities described herein) of packaged seafood  
8 products (“PSPs”) to fix, raise, maintain, and/or stabilize prices for PSPs within the  
9 United States, its territories and the District of Columbia in violation of Sections 1  
10 and 3 of the Sherman Antitrust Act (15 U.S.C. §§ 1, 3). The conspiracy began no  
11 later than August 1, 2008, and continues to the present (the “Class Period”). As  
12 used herein, the term “PSPs” refers to shelf-stable seafood products that are sold in  
13 cans, pouches or ready-to-eat serving packages. The principal type of PSP is canned  
14 tuna.

15 2. As described in greater detail herein, this conspiracy was effectuated by  
16 various means, including, but not limited to: (a) agreeing to decrease the sizes of  
17 cans in which canned tuna is sold; (b) agreeing to issue collusive list price increases  
18 on canned tuna; (c) agreeing to limit promotional activity for PSPs; and (d)  
19 agreeing not to compete by refraining from selling branded canned tuna with labels  
20 indicating it is “FAD Free” (a term that will be explained below). As a result,  
21 Defendants’ PSP prices and profits have increased.

22 3. Moreover, as confirmed in proceedings before this Court, the Antitrust  
23 Division of the United States Department of Justice (“DOJ”) is currently  
24 conducting a criminal investigation of this conspiracy. And, critically, one of the  
25 key domestic PSP producers--Tri-Union Seafoods LLC--has been publicly reported  
26 to have sought leniency from the DOJ under the agency’s program that grants  
27 immunity to the first company to admit antitrust violations.  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**II. JURISDICTION AND VENUE.**

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

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

6. Defendants are amenable to service of process under Fed. R. Civ. P. 4(k)(1)(A) and the long-arm statute of California (Cal. Code of Civ. Procedure §410) because each has transacted business in this state and because the California long-arm statute extends jurisdiction to the limits of due process and each Defendant has sufficient minimum contacts with the state of California to satisfy due process.

7. This Court has personal jurisdiction over Defendants because, *inter alia*, each Defendant: (a) transacted business in this District, the United States and its territories, and the District of Columbia; (b) directly or indirectly sold and delivered PSPs in this District, the United States and its territories, and the District of Columbia; (c) has substantial aggregate contacts with this District, the United States and its territories, and the District of Columbia; and (d) engaged in an illegal price-fixing conspiracy that was directed at, and had the intended effect of causing

1 injury to, persons and entities residing in, located in, or doing business in this  
2 District, the United States and its territories, and the District of Columbia.

3 **III. PLAINTIFFS.**

4 8. Plaintiff Olean Wholesale Grocery Cooperative, Inc. (“Olean”) is a  
5 resident of the State of New York. Operating out of a 380,000 square foot  
6 distribution center in Olean, New York, Olean currently services retail members  
7 and a large number of non-member retailers in Western and Central New York,  
8 Western Pennsylvania and Northeastern Ohio. During the Class Period, Olean  
9 purchased PSPs directly from one or more of the Defendants and was injured in its  
10 business or property by reason of the antitrust violations alleged in this complaint.

11 9. Plaintiff Pacific Groservice Inc. d/b/a PITCO Foods (“PITCO”) is a  
12 grocery wholesaler having its principal place of business in San Jose, California.  
13 During the Class Period, PITCO purchased PSPs directly from one or more of the  
14 Defendants and was injured in its business or property by reason of the antitrust  
15 violations alleged in this complaint.

16 10. Plaintiff Piggly Wiggly Alabama Distributing Co., Inc. (“Piggly  
17 Wiggly”) is an Alabama corporation with its principal place of business in  
18 Bessemer, Alabama. Piggly Wiggly distributes bakery/delicatessen items, groceries,  
19 meat, and produce to independent retailers in the Southeast. During the Class  
20 Period, Piggly Wiggly purchased PSPs directly from one or more Defendants, and  
21 has been injured in its business or property by reason of the antitrust violations  
22 alleged in this complaint.

23 11. Plaintiff Central Grocers, Inc. (“CGI”) is an Illinois corporation with its  
24 principal place of business in Joliet, Illinois. Plaintiff is a member owned grocery  
25 wholesaler supplying over 400 independent grocery retailers in the Chicago  
26 metropolitan area and Northwest Indiana. During the Class Period, CGI purchased  
27 PSPs directly from one or more Defendants, and has been injured in its business or  
28 property by reason of the antitrust violations alleged in this complaint.

1 12. Plaintiff Associated Grocers of Florida, Inc. (“AGF”) is a Florida  
2 corporation with its principal place of business in Pompano Beach, Florida. AGF is  
3 a food retail distribution company. During the Class Period, AGF purchased PSPs  
4 directly from one or more Defendants, and has been injured in its business or  
5 property by reason of the antitrust violations alleged in this complaint.

6 13. Plaintiff Trepcu Imports and Distribution Ltd. (“Trepcu”) is a  
7 California corporation with its principal place of business in San Diego,  
8 California. Trepcu is a wholesale grocery and convenience store supply company.  
9 During the Class Period, Trepcu purchased PSPs directly from one or more  
10 Defendants, and was injured in its business or property by reason of the antitrust  
11 violations alleged in this complaint.

12 14. Plaintiff Benjamin Foods LLC (“Benjamin”) is a broadline food  
13 distributor located in Hatboro, Pennsylvania. Benjamin distributes groceries,  
14 frozen foods, meat, poultry, seafood, dairy and produce, among other products, to  
15 public and private foodservice clients and government agencies. During the Class  
16 Period, Benjamin purchased PSPs directly from one or more of the Defendants and  
17 was injured in its business or property by reason of the antitrust violations alleged  
18 in this complaint.

19 15. Plaintiff John Gross & Co. (“Gross”) is a food distributor servicing the  
20 away-from-home foodservice sector with its principal place of business in  
21 Mechanicsburg, Pennsylvania. During the Class Period, Gross purchased PSPs  
22 directly from one or more of the Defendants and was injured in its business or  
23 property by reason of the antitrust violations alleged in this complaint.

24 **IV. DEFENDANTS.**

25 **A. Bumble Bee.**

26 16. Defendant Bumble Bee Foods LLC (“Bumble Bee”) is a domestic  
27 corporation with its principal place of business located at 280 10th Avenue, San  
28 Diego, California 92101. Bumble Bee produces and sells PSPs throughout the

1 United States (including this District), its territories and the District of Columbia.  
2 The Bumble Bee brand was created in 1910 by a group of canners who had  
3 organized themselves over a decade earlier as the Columbia Rivers Packer  
4 Association (“CRPA”). The first Bumble Bee Seafoods, Inc. was created in 1960  
5 by Castle & Cook, a prominent Hawaii-based seafood company that had acquired  
6 the interests of CRPA. In 1997, the predecessor entity to Bumble Bee was acquired  
7 by International Home Foods, which was in turn was acquired by ConAgra Foods  
8 (“ConAgra”) in 2000. In 2003, the present Bumble Bee entity was created through a  
9 spin-off by ConAgra to Bumble Bee’s senior management, including its current  
10 President and Chief Executive Officer (“CEO”), Chris Lischewski (“Lischewski”).  
11 In 2004, Bumble Bee combined its business with Connors Bros. Income Fund to  
12 become the largest branded seafood company in North America and in 2008,  
13 Bumble Bee became a private company when it was acquired by Centre Partners.  
14 Two years later, Centre Partners sold Bumble Bee for \$980 million to another  
15 private owner, Lion Capital (“Lion”), which is based in the United Kingdom. Lion  
16 is the current owner of Bumble Bee.

17 **B. Thai Union Group And Tri-Union.**

18 17. Defendant Tri-Union Seafoods LLC (“Tri-Union”) is a domestic  
19 corporation with its principal place of business located at 9330 Scranton Road,  
20 Sorrento South Corporate Center, Suite 500, San Diego, California 92121. It  
21 operates under the name “Chicken of the Sea.” Tri-Union produces and sells PSPs  
22 throughout the United States (including this District), its territories and the District  
23 of Columbia. Its initial predecessor entity was the Van Camp Seafood Company,  
24 created in 1914. That entity eventually became wholly owned by Tri-Union’s  
25  
26  
27  
28



1 parent, Thai Union Frozen Products PCL (“TUF”) (now known as Thai Union  
2 Group Public Company Limited (“TUG”)) in 2000.<sup>1</sup>

3 18. Defendant TUG is a corporation organized and doing business under  
4 the laws of Thailand. TUG is the world’s largest canned tuna producer, processing  
5 18% of the world’s production. It is also the largest canned tuna producer in  
6 Thailand. Its head office is located at 72/1 Moo 7, Sethakit 1 Road, Tambon Tarsai,  
7 Mueang Samut Sakhon District, Amphur Muangsamutsakorn, Samutsakorn 74000,  
8 Thailand. TUG, through its wholly-owned subsidiary Tri-Union Seafoods LLC,  
9 produces and sells PSPs throughout the United States (including this District), its  
10 territories and the District of Columbia. In recent years, 40% or more of its sales  
11 have originated in the United States, which is its largest market. TUG also  
12 purposefully directs its activities to the United States by exporting PSPs, including  
13 canned tuna, from Thailand to this country. TUG further purposefully directs its  
14 activities to the United States through its method of conducting business. It  
15 currently has three strategic business units, one of which is the “Ambient Seafood”  
16 unit, which includes its global canned tuna business; Tri-Union is part of that  
17 business unit and is viewed by TUG as part of its footprint in the United States.  
18 Indeed, TUG has its own fishing fleet and is thus vertically integrated with Tri-  
19 Union. TUG also purposefully directs its activities into the United States by  
20 operating Thai Union North America, Inc. (“TUNAI”) (a company formerly  
21 known as Thai Union International, Inc.), that was founded in 1996. TUNAI is a  
22 wholly-owned instrumentality of TUG and has its address at 9330 Scranton Road,  
23 Sorrento South Corporate Center, Suite 500, San Diego CA 92121 (the same  
24 address as Tri-Union). TUNAI’s President is Thiraphong Chansiri (President and  
25

---

26 <sup>1</sup> TUG is a publicly-traded company that was first listed on the Stock Exchange of  
27 Thailand in 1994 as “Thai Union Frozen Products PCL”, and which changed its  
28 name to TUG in or about 2015. As used herein, the acronym “TUG” refers to both  
TUG and, with respect to the applicable time period, its predecessor entity TUF.

1 CEO of TUG). The Chansiri family is the largest single shareholder in TUG,  
2 owning 20.4% of its stock.<sup>2</sup>

3 19. TUG directly participated in the conspiracy alleged herein and used its  
4 dominance and control over Tri-Union's PSP business to conspire with the other  
5 Defendants and their co-conspirators. Among the members of the Board of  
6 Directors of Tri-Union are Kraisorn Chansiri (Chairman of TUG), Cheng  
7 Niruttinanon (Executive Chairman of TUG),<sup>3</sup> and the aforementioned Thiraphong  
8 Chansiri. A former Director of Tri-Union was Chan Tin King, Executive Director  
9 and Chief Financial Officer ("CFO") of TUG. Shue Wing Chan ("Chan"), the  
10 President and CEO of Tri-Union since 2007, is a member of the Chansiri family,  
11 and is a member of TUG's self-styled "Global Leadership Team." Prior to joining  
12 Tri-Union, he served as the CFO of TUG.<sup>4</sup> TUG exercises control and dominance  
13 over Tri-Union through these individuals. According to his own LinkedIn  
14 webpage, David Roszmann ("Roszmann"), the former Chief Operating Officer  
15 ("COO") of Tri-Union, who joined the company in March of 2013, "only direct[ly]  
16 reported to CEO [Chan] relative of majority owning family of this foreign public  
17 company [TUG] with all functions direct[ly] reporting to COO including sales,  
18 marketing, procurement, supply chain, operations, finance, HR. legal and IT."

19  
20 <sup>2</sup> TUG sponsors the Issuance of American Depository receipts traded on NASDAQ  
21 that allow United States investors to trade its equities in the domestic securities  
22 market. In that connection, it regularly files reports with the United States  
23 Securities & Exchange Commission.

24 <sup>3</sup> The Niruttinanon family is the third largest shareholder in TUG, owning 7.0% of  
25 its stock.

26 <sup>4</sup> According to one report, as CFO of TUG, Chan "managed the TUF overall  
27 business development and financial operations, including day-to-day matters related  
28 to financial administration and business performance. He was responsible for  
managing the development and implementation of business plans and financial  
strategies for the expansion of TUF's business."

1 Roszmann left Tri-Union in December of 2015, soon after Tri-Union’s attempt to  
 2 acquire Bumble Bee was assailed by the DOJ, as further described below. As far as  
 3 Plaintiffs are aware, Roszmann has not been replaced, so TUG’s CEO Chan now  
 4 effectively runs the day-to-day operations of Tri-Union.

5 20. TUG publicly acknowledges its dominance over Tri-Union. The  
 6 following pertinent excerpt of an organizational chart that appears on TUG’s  
 7 website demonstrates that TUG views Tri-Union as part of its overall “Global Tuna  
 8 Business” and “US Ambient Operations” that are controlled directly by TUG’s  
 9 Board of Directors and executives.



10  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20 21. Thus, Tri-Union is an instrumentality and *alter ego* of TUG. As set  
 21 forth below in excerpts from TUG’s Annual Reports, TUG knew of and profited  
 22 from the conspiracy alleged herein.

23 22. Unless otherwise indicated, TUG and Tri-Union will be referred to  
 24 collectively herein as “CoS.”

25 **C. Dongwon And StarKist.**

26 23. Defendant StarKist Company is a domestic corporation with its  
 27 headquarters located at 225 North Shore Drive, Suite 400, Pittsburgh, Pennsylvania  
 28 15212. StarKist Company produces and sells PSPs throughout the United States

1 (including in this District), its territories and the District of Columbia. The  
 2 predecessor to StarKist Company was the French Sardine Company, created by a  
 3 group of fishermen in 1918. In 1942, it adopted the brand name “StarKist.” It was  
 4 acquired by the H.J. Heinz Co. in 1963 and, by the 1980s, was considered by many  
 5 to be the leading brand of canned tuna in the United States. In 2002, Del Monte  
 6 Company bought the StarKist Company. Defendant Dongwon Industries Co., Ltd.  
 7 (“Dongwon”) acquired the company in 2008 for \$363 million.

8 24. Defendant Dongwon is a corporation organized and doing business  
 9 under the laws of South Korea, with its headquarters located at Dongwon Industries  
 10 Building 7th floor, Mabang-ro 68 (Yangjae-dong), Seocho-gu, Seoul, Korea.  
 11 Dongwon is a publicly traded company listed on the Korean Stock Exchange. It is  
 12 the largest producer of canned tuna in South Korea. Dongwon itself has repeatedly  
 13 availed itself of the jurisdiction of United States federal courts.<sup>5</sup>

14 \_\_\_\_\_  
 15 <sup>5</sup> *Dongwon Indus. Co., Ltd. v. Yoshida*, No. 90-cv-00282 (D. Alaska); *Yu Sheng*  
 16 *Fishery Co. v. Dongwon Indus. Co., Ltd.*, No. 91-00018, 1991 WL 126138, at \*1  
 17 (D. Guam May 20, 1991) (denial of motion by Dongwon for *vacatur* of writ of  
 18 maritime attachment, dismissal of *in rem* claims and release of security; court noted  
 19 that “[t]here is no dispute of the fact that Dongwon has sufficient minimum contacts  
 20 with Guam to subject it to general *in personam* jurisdiction and suit in this  
 21 district”); *Matter of Yu Sheng Fishery Co., Ltd.*, 1993 A.M.C. 116 (D. Guam July  
 22 12, 1991); *Dongwon Indus. Co., Ltd. v. Ships Gear & Transit, Inc.*, No. 93-cv-  
 23 01691 (S.D. Cal.) (suit alleging contract and tort claims against seller of a purse  
 24 seine skiff); *Perez v. Dongwon Indus. Co.*, No. 1:02-cv-00025 (D. Guam Aug. 9,  
 25 2002) (admiralty suit against Dongwon that was settled); *United States ex rel.*  
 26 *Moore & Co., P.A. v. Majestic Blue Fisheries, LLC*, 69 F.Supp. 3d 416 (D. Del.  
 27 2014), *rev’d*, 812 F.3d 294 (3d Cir. 2016) (“*Moore*”) (proceedings involving  
 28 defendants’ (including Dongwon) motion to dismiss claims under the False Claims  
 Act relating to the sinking a United States-flagged vessel operated by Dongwon);  
*Hill v. Majestic Blue Fisheries, LLC*, Civ. No. 11-00034, 2013 WL 1499155 (D.  
 Guam April 12, 2013) (“*Hill*”) (denying Dongwon’s motion to dismiss for failure to  
 state a claim) and 2015 WL 3961421 (D. Guam June 30, 2015) (involving various  
 motions dealing with pretrial settlement by Dongwon); *Yang v. Majestic Blue*  
*Fisheries, LLC*, Civ. No. 13-00015, 2015 WL 5001190 (D. Guam Jan. 14, 2015),

1           25. According to StarKist Company’s website:

2                   Founded in 1969, Dongwon Group began as a fisheries  
3                   business and branched out into various sectors including  
4                   a strong food & beverage manufacturing arm, Dongwon  
5                   F&B. Dongwon F&B now owns 75% of the canned tuna  
6                   market share in Korea. Dongwon Industries is one of the  
7                   world's largest tuna catching companies with a fleet of 36  
8                   boats. Dongwon's world class fish procurement and  
9                   processing capacity builds on StarKist's national brand  
10                  recognition and distribution networks in the United States  
11                  to bring world-class seafood to consumers worldwide.

12                  \_\_\_\_\_

13                  *adopted in part and rejected in part*, 2015 WL 5003606 (D. Guam Aug. 24, 2015),  
14                  *recon. denied*, 2016 WL 1411335 (D. Guam April 11, 2016) (all dealing with  
15                  Dongwon’s participation in a scheme with relatives of corporate insiders to acquire  
16                  two United States flagged vessels). The *Hill*, *Yang* and *Moore* cases are of  
17                  significance here. The underlying facts are laid out in *Majestic Blue*, 2014 WL  
18                  3728556, at \*10-35 and the *qui tam* complaint filed in the *Moore* case in November  
19                  of 2012. Dongwon owned the F/V *Majestic Blue*, a tuna fishing vessel. Jae-woong  
20                  Kim, the brother of Dongwon Chairman Jae-chul Kim, was the General Manager of  
21                  Dongwon’s office in Guam and had two daughters who were American citizens  
22                  born on Guam. In 2008, those women became the figureheads for Majestic Blue  
23                  Fisheries LLC (“MBFLLC”), a United States limited liability company. The F/V  
24                  *Majestic Blue* was sold to that entity for \$10. MBFLLC thereupon entered into  
25                  maintenance and ship manning contracts with Dongwon whereby the latter  
26                  essentially ran the vessel, which, because it was owned by American citizens, could  
27                  fly the American flag. A series of American captains was hired to lead the vessel,  
28                  but they were figureheads; largely Korean personnel selected by Dongwon really  
                  held the reins of control. The crew on the vessel engaged in repeated violations of,  
                  *inter alia*, MARPOL (the International Convention on the Prevention of Pollution  
                  from Ships) and certain laws relating to fishing practices. In June of 2010, the  
                  vessel sank after a series of poor repairs by Dongwon. MBFLLC sued for a  
                  limitation of its liability. Chief Engineer Chang Cheol Yang and Captain David Hill  
                  both died in the incident and their next of kin sued both MBFLLC and Dongwon.  
                  Dismissal of the *Moore* case was recently reversed, and the findings of fact made  
                  by the Magistrate Judge in *Majestic Blue* are being appealed to the Ninth Circuit.  
                  Adam Baske, a tuna expert formerly with the Pew Charitable Trusts, has, in an  
                  article on the F/V *Majestic Blue*, called Dongwon “one of the international bad  
                  boys in terms of illegal fishing activity.” <<https://medium.com/matter/mutiny-on-the-majestic-blue-80e3d2fbb345#.4wrwj94gy>>.

1 Dongwon’s own website has this to say about its control over StarKist Company:

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

17 26. Dongwon purposefully directs its activities to the United States through  
18 its “controlled” and wholly-owned subsidiary StarKist Company, through which it  
19 produces and sells PSPs throughout the United States (including in this District), its  
20 territories and the District of Columbia. Indeed, Dongwon has its own fishing fleet  
21 and is vertically integrated with StarKist Company. Dongwon also purposefully  
22 directs its activities to the United States by exporting PSPs, including canned tuna,  
23 to this country. Dongwon directly participated in the conspiracy alleged herein, as  
24 well as using its control over StarKist Company’s PSP business to conspire with the  
25 other Defendants and their co-conspirators.

26 27. Dongwon dominates StarKist Company. The current President and  
27 CEO of StarKist Company is Andrew Choe (“Choe”), who took that position in  
28 September of 2014. Choe joined the company in 2010 as Senior Vice-President of  
its supply chain and Director of Strategic Planning and Development; he had  
previously held an executive position at Dongwon. Likewise, Nam-Jung Kim (son  
of Dongwon Chairman Jae-chul Kim), who served as the COO of StarKist  
Company from 2012 until October of 2014, was Vice-President of Dongwon F&B

1 and of Dongwon Enterprise Co. He now serves as a Director of both StarKist  
 2 Company and Dongwon.<sup>6</sup> Similarly, Hyung-Joo Kim, Chief Financial Officer  
 3 (“CFO”) of Dongwon F&B, became the CFO of the StarKist Company in 2012.  
 4 Likewise, In-gu Park, the Chairman of the Board of StarKist Company, who also  
 5 served as its Acting President from November of 2010 to March of 2011, serves as  
 6 CEO of Dongwon Precision Machinery Company.

7 28. After the acquisition, American executives at StarKist Company began  
 8 to leave—voluntarily and involuntarily. One report indicated that a “plethora of  
 9 executives from Dongwon Industries’ Seoul headquarters—complete with  
 10 translators” had “descend[ed] on Pittsburgh to sort out the ‘challenges’ the  
 11 company is going through”; one source stated that “there is so much American  
 12 management leaving and probably even more so after this announcement...”<sup>7</sup>  
 13

14 29. Thus, StarKist Company is the instrumentality and *alter ego* of  
 15 Dongwon and, as explained below, the latter knew of and profited from the  
 16 conspiracy alleged herein.

17 \_\_\_\_\_  
 18 <sup>6</sup> According to one article, “Kim Nam-Jung is the younger son of Dongwon  
 19 chairman Kim Jae-Chul, who founded the business in 1969 to fish for tuna and  
 20 established his first overseas base in the Republic of Ghana in 1973.... In  
 21 preparation for succession, the founder has been transferring ownership of the  
 22 private family holding company, Dongwon Enterprise Co., which owns stakes in  
 various listed affiliates, to Nam-Jung. Jae-Chul holds a 24.5% stake and Nam-Jung,  
 68%.”

23 <sup>7</sup> Dongwon is no stranger to antitrust violations in the food industry. In June of  
 24 2011, one of its subsidiaries, Dongwon Dairy Foods, was fined 1.31 billion Korean  
 25 won by the Korean Fair Trade Commission (“KFTC”) for conspiring with three  
 26 other firms to rig prices in the South Korean cheese market. According to the  
 27 KFTC, employees of the Dongwon subsidiary were found to have participated in “a  
 28 covert organization established for the purpose of such price-fixing”; they had  
 multiple meetings with competitors in 2007-08, in which they agreed to raise  
 cheese prices by 15-20%.

<http://www.koreaherald.com/view.php?ud=20110626000297>.

1 30. Unless otherwise indicated, Dongwon and StarKist Company will be  
2 referred to collectively herein as “StarKist.”

3 **V. AGENTS.**

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

7 **VI. INTERSTATE TRADE AND COMMERCE.**

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

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

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

20 **VII. FACTUAL ALLEGATIONS.**

21 **A. The Nature Of, Concentration Of, And Consolidation In The**  
22 **Domestic PSP Market.**

23 **1. Nature of the Domestic PSP Market.**

24 35. PSPs are sold directly by Defendants to club warehouses, wholesale  
25 grocery suppliers, grocery cooperatives, mass merchandisers, retailers, and drug  
26 stores, among others. According to a May 2012 presentation by Bumble Bee, total  
27 United States retail sales of shelf-stable seafood products were \$2.346 billion in  
28 2011 and were forecasted to be \$2.397 billion in 2012. Bumble Bee estimated that



1 canned tuna represents 73% of this value. In the same report, Bumble Bee estimated  
2 that total United States retail sales of shelf-stable tuna were \$1.719 billion in 2011  
3 and were forecasted to be \$1.750 billion in 2012.

4 36. As noted above, the primary type of PSP is canned tuna. Canned tuna is  
5 a commodity product. The United States Department of Labor (“DoL”) has referred  
6 to canned tuna as a “relatively undifferentiated commodity...with widespread  
7 consumer indifference to its country of origin or brand name.”

8 37. CoS’s website describes the processing procedures for canned tuna  
9 made from frozen or refrigerated tuna loins:

10 Sourcing

11 Tuna is highly migratory and found in all the major  
12 oceans around the globe. Once our wild-caught tuna is  
13 caught, it is flash frozen and delivered to one of our  
14 processing facilities.

15 Fish Receiving

16 Fish are delivered to canneries frozen or refrigerated.  
17 Quality evaluations are performed during unloading,  
18 which include monitoring the temperature and condition  
19 of the fish and collecting samples for histamine and salt  
analysis. Lots found unacceptable are rejected.

20 Cold Storage

21 Fish are maintained at temperatures near 0° until  
22 processing

23 Pre-Processing Evaluation

24 Prior to being scheduled for processing, representative  
25 samples from each lot are test-packed and samples are  
26 evaluated before and after canning to assess quality. Test-  
27 pack results are used to determine acceptability and  
28 process requirements of fish remaining in each lot.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

### Thawing

When lots are scheduled for processing in our canneries, fish are brought out of cold storage and thawed to backbone temperatures sufficient to facilitate evisceration and sensory evaluation.

### Evisceration & Evaluation

Viscera are removed and each fish is evaluated by trained staff for physical characteristics associated with decomposition or contamination. Any fish exhibiting unacceptable characteristics is rejected.

### Pre-Cooking

Acceptable fish are placed on racks and transferred to large ovens, where they are cooked sufficiently to facilitate cleaning of the fish.

### Cleaning

Each fish is manually cleaned and inspected for quality attributes. The cleaning operation consists of removing the head, tail, skin, bones and dark flesh known as red meat.

### Can Filling

Cleaned tuna loins are fed into filling machines where prescribed amounts of fish are placed into cans. Via a separate system, empty cans are conveyed to filling machines after having been inverted and flushed with air jets and/or water sprays.

### Ingredient Addition

Cans leaving the filling machine are conveyed past points where prescribed amounts of spring water or canola oil and other ingredients are added.

### Can Sealing

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Filled cans are conveyed to sealing machines where lids are put in place and the cans hermetically sealed. Each can or lid is affixed with a permanent production code that identifies plant, product, date packed, batch and other pertinent information. The integrity of the hermetic seal is evaluated at frequent intervals during processing to ensure product safety.

#### Thermal Processing

Sealed cans are retorted (cooked) under pressure utilizing process time and temperature schedules designed by processing experts to render the product commercially sterile. All aspects of thermal processing are strictly monitored and controlled.

#### Finished Product Evaluation

Samples of each finished production code receive qualitative (e.g., color, odor, flavor, texture and cleaning) and quantitative evaluations prior to being released for labeling.

#### Labeling & Casing

Product lots meeting finished product evaluation criteria are delivered to labeling lines where they are labeled and cased. Cased products are appropriately marked with information necessary to facilitate product tracing.

#### Warehousing & Shipping

Cased products are shipped or are staged in warehouses for later shipment.

Bumble Bee’s website has a similar description of processing of tuna loins for use in canned tuna.

38. StarKist’s processing and canning of tuna is slightly different, as explained at its FAQ webpage. At its facility in American Samoa, it receives frozen

1 tuna from fishing vessels; thaws and cleans it; processes it into loins, which are cut  
2 into sizes suitable for canning; and packs the processed fish into cans that are then  
3 sealed at the facility.

## 4 **2. Concentration In The Domestic PSP Market.**

5 39. Defendants StarKist, Bumble Bee and CoS are the three largest  
6 domestic manufacturers of PSPs generally and processed tuna in particular. The  
7 industry is highly concentrated. According to the aforementioned 2012 presentation  
8 by Bumble Bee, it had 29% of the domestic shelf-stable seafood market, CoS had  
9 18.4% and StarKist had 25.3%. The remaining market share was comprised of  
10 smaller companies and private label brands (which are often produced by Bumble  
11 Bee, CoS, or StarKist). With respect to shelf-stable tuna, StarKist had 34.6% of the  
12 market, Bumble Bee had 27.8% and CoS had 19.4%.

13 40. In December of 2014, the *Wall Street Journal* reported that the  
14 Defendants' respective shares of the domestic market for canned tuna were 13% for  
15 CoS, 25% for Bumble Bee, and 36% for StarKist. Bualuang Securities reported the  
16 shares for the domestic canned tuna market slightly differently, with StarKist at  
17 30%, Bumble Bee at 28% and CoS at 20%.

## 18 **3. Consolidation In The Domestic PSP Market.**

19 41. This oligopolistic structure of the domestic PSP market is the result of  
20 recent mergers and acquisitions.<sup>8</sup> For example, in 1997, Van Camp Seafood  
21 Company ("Van Camp") was acquired by the investment group Tri-Union, of  
22 which TUG was a member. Thereafter, in 2000, TUG bought out the other  
23 investors to acquire Van Camp completely, which it renamed Chicken of the Sea  
24 International, an entity that was later merged into Defendant Tri-Union.

25  
26  
27  
28 

---

<sup>8</sup> An oligopoly is a market or industry dominated by a small number of sellers.

1           42. In 2008, Dongwon acquired the StarKist entity then in existence from  
2 Del Monte Foods for \$363 million. A *Wall Street Journal* article noted the  
3 following about the acquisition:

4                   "We believe this acquisition will help Dongwon establish  
5 a strong foothold in penetrating the U.S. market, from  
6 which we can advance to Latin America and Europe,"  
7 said Park In-gu, vice chairman of Dongwon Group's  
8 holding company Dongwon Enterprise Co. "The Starkist  
9 seafood brand and platform will fortify Dongwon's  
10 presence as a leading provider of marine products in the  
11 global market."

12           43. Similarly, in 2014, TUG bought King Oscar, a Norwegian sardine  
13 canner that sold 37% of its products in the United States. King Oscar is now 100%  
14 owned by TUG.

15           44. And in December of 2014, TUG announced the acquisition from Lion  
16 (subject to regulatory approval) of Bumble Bee for \$1.51 billion. The combination  
17 of CoS and Bumble Bee would have created a virtual duopoly, with the combined  
18 entity substantially exceeding the market share of StarKist. TUG had planned to  
19 finance the acquisition partly through a preferential public offering to existing  
20 shareholders that would have raised approximately \$380 million. As explained  
21 below, that acquisition did not take place.

#### 22                   **4. Barriers To Entry In The Domestic PSP Market.**

23           45. The oligopolistic structure of the domestic PSP industry is further  
24 reinforced by barriers to entry formed by high initial capital investment for  
25 processing and canning facilities and domestic tariffs that limit foreign competition.

26           46. As is clear from the foregoing, there are significant capital outlays  
27 associated with production of PSPs. Bumble Bee and CoS have a co-packing  
28 agreement, and share tuna processing facilities in Santa Fe Springs, California and  
Lyons, Georgia. StarKist operates a processing facility in American Samoa.  
StarKist, CoS and Bumble Bee also have major investments in operations outside

1 the United States. CoS used to operate a fish processing facility in American  
 2 Samoa. In 2009, it sold that facility to Tri Marine International, Inc. which spent  
 3 \$70 million over six years to bring it back in operation.

4 47. In addition to capital outlays forming a barrier to entry, United States  
 5 tariffs on imported canned tuna deter significant domestic sales by foreign  
 6 producers. The DoL has noted that tariff rates are six percent *ad valorem* on canned  
 7 tuna not packed in oil weighing seven kilograms or less and 12.5 percent *ad*  
 8 *valorem* for the same product weighing over seven kilograms.

9 **B. Demand, Supply, And Pricing in the Domestic PSP Market.**

10 **1. The Oversupply of Tuna.**

11 48. The primary types of tuna used in canned tuna sold in the United States  
 12 are skipjack and albacore. Skipjack accounts for the vast majority of canned tuna  
 13 sold and is often described on labels as “light tuna.”

14 49. There is currently and has been in recent years an oversupply of  
 15 skipjack being caught, due, *inter alia*, to the use of purse seining as a method of  
 16 capture.<sup>9</sup> In 2011, the Pacific Islands Forum Fisheries Agency reported that in the  
 17 Western Centric Pacific Ocean, the total purse seine catch increased from 113,000  
 18 metric tons in 1980 to 1.8 million metric tons in 2009; the catch per vessel climbed  
 19 from 3,750 metric tons in 1986 to 7,100 metric tons in 2007.

20 50. The issues of excessive capture have been aggravated in recent years by  
 21 the extensive use of fish aggregating devices (“FADs”)—man-made objects such as  
 22  
 23  
 24

25 <sup>9</sup> As Lischewski of Bumble Bee described purse seining in an article published last  
 26 year, “[w]ith a purse seiner, they can set a net, encircle a school of tuna, then we  
 27 pull a rope through the bottom of the net to close it and that’s our purse. And then  
 28 we can bring that net into the boat, and we can actually scoop the tuna--generally  
 still alive, right out of the nets, and into refrigerated sea water until we ultimately  
 freeze them on board.”

1 floats or buoys that are used to attract certain ocean-going fish. As stated in a  
 2 February 2016 article in *Undercurrent News*:

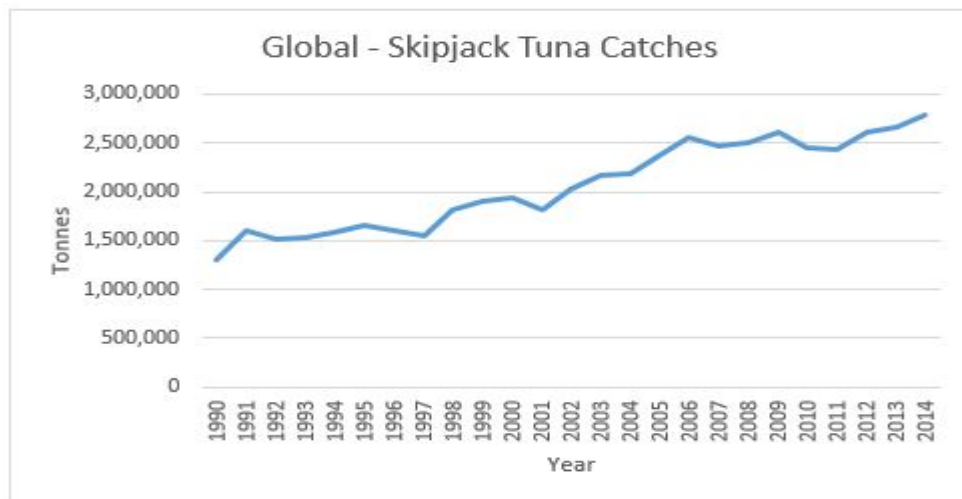
3 A tuna industry veteran believes that there is a “major  
 4 shakeout” coming if vessel owners don’t act fast to  
 5 address issues leading to the sector's current oversupply.

6 Henk Brus, of the firm Sustunable, told attendees at the  
 7 Americas Tuna Conference on Jan 29 that he believes the  
 8 explosion in the use of fish aggregating devices (FADs)  
 9 in the Eastern Pacific Ocean is the main cause of the  
 10 oversupply and the recent plunge that skipjack tuna  
 11 prices have experienced in recent years.

12 “With the software that is available now today, we’re  
 13 increasingly going to select FADs and we’re not even  
 14 going to catch it anymore. We’re basically going to  
 15 harvest it. If the FAD is ripe we’re going to pick the  
 16 FAD,” he said.

17 Various organizations like Greenpeace have been vocal advocates of  
 18 “sustainability” in fish harvesting: fishing practices that do not result in undue  
 19 depletion of fisheries.

20 51. The following chart, taken from the Western & Central Pacific  
 21 Fisheries Commission’s 2014 “Tuna Fishery Yearbook” published in 2015 shows  
 22 how annual global catches of skipjack increased between 1990 and 2014.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## **2. Price Declines In Raw Skipjack Due To Oversupply.**

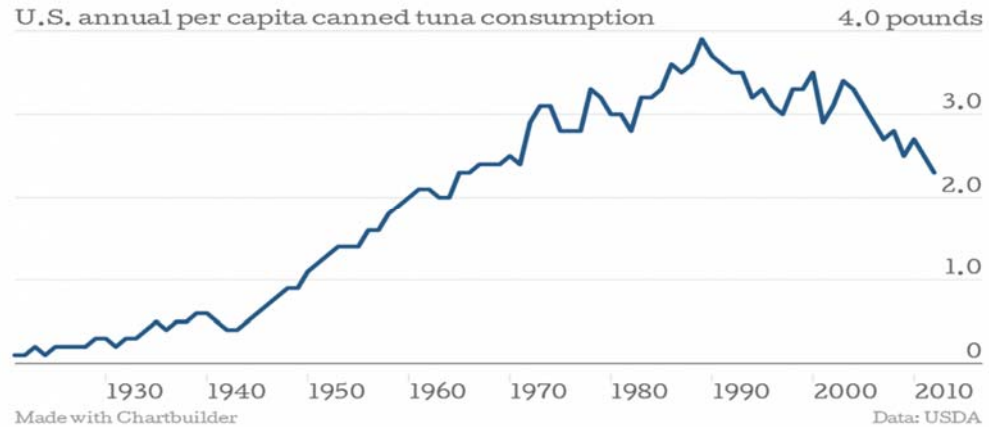
52. The increasing catches of skipjack have led to decreases in the price of raw skipjack. The most recent example is what happened in 2013-15. Between May of 2013 and January of 2014, the price per ton of skipjack in Bangkok fell from \$2350 to \$1250. The price rebounded briefly, but then fell again even further. 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.” The United Nations Food & Agriculture Organization (“FAO”) noted in its May 2015 “Food Outlook” biannual report that raw tuna prices had dropped considerably in 2014: “tuna prices declined significantly due to excess supply, with frozen skipjack prices hitting a 6-year low.” Tuna exporters in Ecuador noted in January of 2015 that the price per metric ton had declined from \$1400 to \$800. By December of 2015, prices out of Ecuador had dropped to \$950 per ton and Thai prices were expected to be between \$950 and \$980 per ton.

## **3. Declining Domestic Consumption Of Canned Tuna.**

53. In the United States, this increase in the amount of tuna caught has not been matched by increases in demand for canned tuna. Consumption of PSPs, particularly canned tuna, has declined over the last ten years in the United States due in large part to changing consumer tastes and concerns over how tuna is fished and the effect on other species, such as dolphins. The annual consumption per person was 3.1 lbs. in 2005, but had fallen to 2.3 lbs. in 2013. This trend has been widely reported.

54. An article in the *Washington Post* graphically represented this decline by measuring United States annual *per capita* consumption from 1930 to 2010:





55. Similarly, the National Marine Fisheries Service reported that consumers in 2013 consumed a pound less of tuna per year than they had in 1985:

**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        |
| <b>1990</b>      | <b>0.4</b> | <b>0.3</b> | <b>3.7</b> | <b>0.3</b> | <b>0.4</b> | <b>5.1</b> |
| 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        |
| 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        |
| 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        |
| 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        |
| <b>2000</b>      | <b>0.3</b> | <b>0.2</b> | <b>3.5</b> | <b>0.3</b> | <b>0.4</b> | <b>4.7</b> |
| 2001             | 0.4        | 0.2        | 2.9        | 0.3        | 0.4        | 4.2        |
| 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        |
| 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        |
| 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        |
| 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        |
| <b>2010</b>      | <b>0.2</b> | <b>0.2</b> | <b>2.7</b> | <b>0.4</b> | <b>0.4</b> | <b>3.9</b> |
| 2011             | 0.2        | 0.2        | 2.6        | 0.4        | 0.4        | 3.8        |
| 2012             | 0.2        | 0.2        | 2.4        | 0.4        | 0.4        | 3.6        |
| <b>2013</b>      | <b>0.4</b> | <b>0.2</b> | <b>2.3</b> | <b>0.4</b> | <b>0.4</b> | <b>3.7</b> |

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

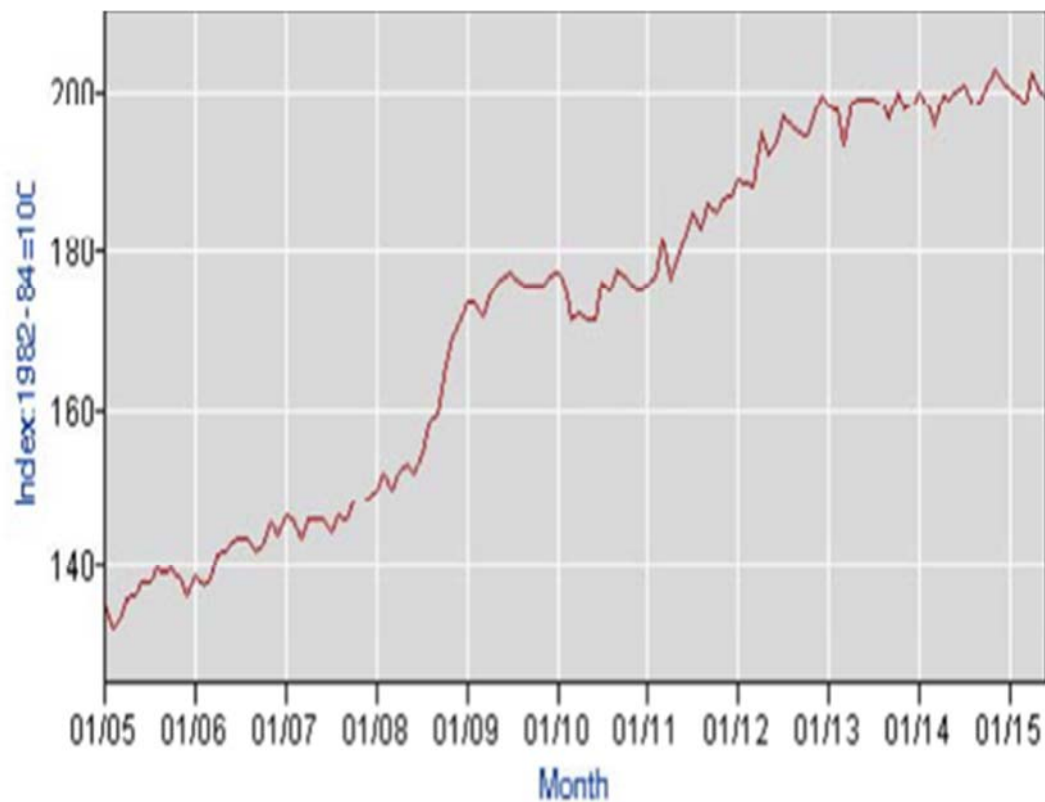
**4. Domestic Pricing Of Canned Tuna.**

56. Canned tuna sold in the United States by StarKist, Bumble Bee and CoS is subject to a “list price.” All three producers engage in limited promotions, which are calculated with reference to that list price.

57. In a competitive market, increased supply of raw materials, with expected lower input costs, combined with stagnant demand, should have resulted in significantly lower list prices and extensive promotions for canned tuna. The domestic canned tuna industry used to be that type of market. In the past, as Lischewski of Bumble Bee had noted at an Infofish conference held in Bangkok, Thailand, the canned tuna industry was highly competitive. Fiercely competing for market share, producers sacrificed profit margins for greater sales volume. In 1985-99, 54.5 percent of the canned tuna sold in the United States was sold with some sort of promotion, with average price discounting of “a staggering 31 percent.” Over this period, retail prices of chunk light half-pound canned tuna had declined from \$43.19 per case to \$20.35, a 53 percent decline in constant dollars. As Lischewski explained:

The fault for this poor performance falls squarely on the shoulders of the tuna industry. Rather than focus on innovation and growth, the three major brands have fought an “unwinnable” war to steal shares from one another in a flat to declining category. Nowhere is this more evident than in profit margins.... Our results estimate that compared to 1980-84, profit margins have eroded by approximately US \$6.75 per case. Multiplying this loss by the 35 million case retail market represents an annual profit loss of more than \$200 million to the tuna industry.

1           58. In other words, the domestic canned tuna industry used to engage in  
 2 real competition involving cut-throat pricing and substantial discounting. Since  
 3 2008, however, the industry has abandoned that competition. The following chart,  
 4 taken from data available at the Bureau of Labor Statistics, depicts seasonally  
 5 adjusted United States average prices for shelf stable fish and seafood from January  
 6 2005 through the first part of 2015, with the period 1982-84 (before the period of  
 7 intense competition identified by Lischewski) identified as a baseline.



59. Indeed, the same *Washington Post* article cited above presented the following graph, which showed that while Americans are buying less canned seafood, they are paying more for what they do buy, as explained further below.



**C. DOJ’s Criminal Investigation Reveals That The Pricing for PSPs Produced By Defendants Was The Result of Collusion.**

60. The regulatory proceedings concerning the proposed merger between CoS and Bumble Bee revealed that Defendants collusively agreed to fix the domestic prices of PSPs. The DOJ’s investigation of conduct in violation of the antitrust laws is continuing.

61. On July 23, 2015, TUG suspended the preferential public offering in connection with CoS’s proposed acquisition of Bumble Bee in light of a grand jury investigation commenced by the DOJ. TUG disclosed on that day that both Bumble Bee and CoS had received grand jury subpoenas relating to an antitrust investigation of PSPs. The publication *Undercurrent News* further reported in an article dated that same day that “Thai Union held a conference with analysts on the suspension of the share offer, in which the company’s management said other US

1 seafood producers have also received a subpoena requiring the production of  
2 relevant information to the DOJ.”

3 62. The publication *Global Competition Review* similarly reported as  
4 follows:

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

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

17 The article goes on to state:

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

23 It is highly likely that something produced in the merger  
24 investigation sparked this investigation touching the  
25 industry as a whole rather than just the parties to the deal,  
26 he said.

27 \*\*\*\*

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

63. TUG held an Extraordinary General Meeting of Shareholders on  
September 16, 2015. The minutes of that meeting state:

Khun Thiraphong Chansiri [Chairman of TUG’s Board  
of Directors] clarified: on the capital increase issue, the

1 Company had a resolution from the Board of Directors  
2 and had the approval from the Office of Securities and  
3 Exchange Commission to delay the capital increase  
4 process for 6 months. The main reason for the delay  
5 request was that the week prior to the due date of the  
6 capital increase payment, *Tri-Union Seafood or Chicken*  
7 *of the Sea International in the United States of America*  
8 *was notified by the Department of Justice of the USA*  
9 *that the investigation on illegal actions regarding Anti-*  
10 *Trust of the whole packaged seafood industry in USA*  
11 *was being carried out, not limited to only on the*  
12 *Company*. Hence the Company had consulted with the  
13 Board of Directors and the legal consultants who shared  
14 their viewpoints that *the Company should delay its*  
15 *capital increase due to a high degree of uncertainty in*  
16 *such serious matter* and to provide time to the  
17 shareholders to thoroughly and completely study the  
18 facts. The Company had no urgent need to use the fund  
19 from the capital increase whatsoever. The Company thus  
20 returned the fund to the shareholders. On the lawsuit  
21 issues, the Company has been keeping an eye on but still  
22 retains no clear facts and data because *the investigation*  
23 *was on the whole industry*. Also the Company has been  
24 informed that the investigation process takes 2-3 years.  
25 (Emphases added)

18 64. This statement indicates that StarKist received a subpoena as well as  
19 because the DOJ's investigation extends to the entire domestic PSP sector. The  
20 presence of such an industry-wide investigation is confirmed by the DOJ's  
21 intervention in this multidistrict litigation and its negotiation with the parties of a  
22 nine-month limited stay of discovery.

23 65. The fact that these companies received subpoenas from a federal grand  
24 jury is significant because it indicates that the DOJ is considering a criminal  
25 prosecution, as is reflected in Chapter 3 of the 2014 edition of the DOJ's Antitrust  
26 Division Manual, available at  
27 <http://www.justice.gov/atr/public/divisionmanual/chapter3.pdf>. Section F.1 of that  
28 chapter notes that "staff should consider carefully the likelihood that, if a grand jury

1 investigation developed evidence confirming the alleged anticompetitive conduct,  
 2 the Division would proceed with a criminal prosecution.” *Id.* at III-82. The staff  
 3 request needs to be approved by the relevant field chief and is then sent to the  
 4 Antitrust Criminal Enforcement Division.” *Id.* “The DAAG [Deputy Assistant  
 5 Attorney General] for Operations, the Criminal DAAG, and the Director of  
 6 Criminal Enforcement will make a recommendation to the Assistant Attorney  
 7 General. If approved by the Assistant Attorney General, letters of authority are  
 8 issued for all attorneys who will participate in the grand jury investigation.” *Id.* at  
 9 III-83. “The investigation should be conducted by a grand jury in a judicial district  
 10 where venue lies for the offense, such as a district from or to which price-fixed  
 11 sales were made or where conspiratorial communications occurred.” *Id.*

12 66. On October 13, 2015, a news article in *Mlex* revealed that an industry  
 13 participant had applied for leniency from the DOJ:

14 It is understood that during the course of the DOJ’s  
 15 merger review, evidence of the cartel was uncovered.  
 16 Chicken of the Sea then sought leniency from the DOJ,  
 17 which grants full immunity to the first company to come  
 forward and admit to cartel violations.

18 It is likely that Chicken of the Sea is seeking so-called  
 19 “Type B” leniency, in which the DOJ uncovers  
 20 wrongdoing first and then uses a company’s cooperation  
 to build out its case.

21 67. The significance of a company seeking Type B leniency cannot be  
 22 understated. According to the DOJ, an applicant for Type B leniency must admit to  
 23 participating in a *criminal violation* of the antitrust laws

24 ([http://www.justice.gov/atr/frequently-asked-questions-regarding-antitrust-  
 divisions-leniency-program](http://www.justice.gov/atr/frequently-asked-questions-regarding-antitrust-<br/>
  25 divisions-leniency-program)):

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

1 Yes. The Division's leniency policies were established  
 2 for corporations and individuals "reporting their illegal  
 3 antitrust activity," and the policies protect leniency  
 4 recipients from criminal conviction. ***Thus, the applicant  
 5 must admit its participation in a criminal antitrust  
 6 violation involving price fixing, bid rigging, capacity  
 7 restriction, or allocation of markets, customers, or sales  
 8 or production volumes before it will receive a  
 9 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. (Emphases added).

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

13 68. On December 3, 2015, it was announced that the planned merger of  
 14 CoS and Bumble Bee was being abandoned. According to a press release on the  
 15 DOJ's website:

16 "Consumers are better off without this deal," said  
 17 Assistant Attorney General Bill Baer [(“Baer”)] of the  
 18 department's Antitrust Division. ***“Our investigation  
 19 convinced us – and the parties knew or should have  
 20 known from the get go – that the market is not  
 21 functioning competitively today, and further  
 22 consolidation would only make things worse.”***  
 (Emphases added).<sup>10</sup>

22 **D. Methods By Which Defendants Effectuated Their Collusive  
 23 Scheme.**

24 69. As noted above, Defendants' scheme to fix domestic prices for PSPs  
 25 had four main facets: (a) agreements to reduce can sizes across the industry; (b)

26 <sup>10</sup> Lischewski of Bumble Bee was unrepentant about the collapse of the deal. He  
 27 was quoted as saying that "[d]uring the last year, Bumble Bee has conducted  
 28 business as usual and now has a renewed focus to execute its vision for the  
 company well into the future."



1 agreements to issue collusive list prices; (c) agreements to limit promotional or  
2 discount activity; and (d) agreements to refrain from offering “FAD Free” products  
3 to consumers. Defendants carried out these aspects of their conspiracy through  
4 secret e-mails and telephone calls, as wells as through conversations and meetings  
5 facilitated by various industry groups. Each of these types of conduct is described  
6 below.

### 7 **1. Collusion On Can Size Changes.**

8 70. The conspiracy began when StarKist, Bumble Bee and CoS collusively  
9 raised prices by decreasing the amount of tuna in cans sold to putative class  
10 members without also decreasing prices. On May 28-30, 2008, representatives of  
11 the three companies gathered at the annual Infofish conference in Bangkok,  
12 Thailand (where TUG is headquartered). Lischewski of Bumble Bee gave a keynote  
13 address, urging fellow “global tuna industry leaders” to undertake the challenge to  
14 drive the development of “sustainable tuna management practices.” Thereafter,  
15 beginning in or about August of 2008, Bumble Bee, CoS and StarKist began  
16 distributing 5 oz. cans of tuna to replace their 6 oz. cans. As the Arizona  
17 Department of Health Services said in a September 2008 circular, “[t]he tuna  
18 industry recently reduced the size of the can from 6 ounces to 5 ounces.” Indeed, a  
19 spokesperson for CoS stated that the move was a collective one: “*Chicken of the*  
20 *Sea followed its competition and industry in the reduction of package sizes.*”  
21 (Emphases added). The can size change was largely completed in 2009 and  
22 increased the price per ounce of canned tuna sold to Defendants’ customers.

23 71. Even with this alteration in can size for processed tuna, the Defendants  
24 were still unhappy with the prices they obtained. Lischewski of Bumble Bee  
25 complained in April of 2011 that canned tuna was “too cheap.” He said it was  
26 important to persuade customers to pay more for canned tuna.  
27  
28

1                                   **2. Collusion On List Price Increases.**

2           72. Bumble Bee, CoS and StarKist also collusively increased prices for  
3 canned tuna sold to customers in the United States by agreeing on list price  
4 increases. The Defendants implemented these coordinated price increases through  
5 face-to-face meetings, telephone calls, and e-mails among senior executives and  
6 sales personnel at each company, including through communications conducted in  
7 connection with or under the auspices of the NFI and the International Seafood  
8 Sustainability Foundation (“ISSF”), an organization that was jointly founded by  
9 StarKist, Bumble Bee and CoS (among others) in 2009 and is currently chaired by  
10 Lischewski of Bumble Bee.

11           73. For example, and without limitation, Bumble Bee, CoS and StarKist  
12 collusively agreed to a series of list prices increases for canned tuna in 2011 and  
13 2012.

14           74. StarKist announced list price increases for canned tuna on March 11,  
15 2011, which were also implemented by Bumble Bee and CoS. Bumble Bee  
16 announced a price increase on March 14, 2011 and CoS did likewise on June 15,  
17 2011.

18           75. The coordination of list price increases by StarKist, Bumble Bee and  
19 CoS continued in late 2011 and 2012. In a series of telephone conversations  
20 between senior executives and sales representatives for each of these three  
21 Defendants beginning in December of 2011 and continuing for the first 18 days of  
22 January of 2012, they agreed to coordinate the announcement and implementation  
23 of identical or very similar list price increases.

24           76. All three companies announced coordinated list price increases on  
25 canned tuna in the first quarter of 2012 that took effect in the second quarter of  
26 2012. StarKist’s announcement was made on January 13, 2012 and became  
27 effective on March 26, 2012. Bumble Bee’s announcement was made on January  
28 17, 2012 and became effective on April 1, 2012. CoS’s announcement was made on

1 January 18, 2012 and became effective on April 1, 2012. The increases often  
2 resulted in identical list prices. For example, 48-can cartons of 5 oz. light tuna went  
3 from \$40.80 to \$43.58 for all three companies. The increases were orchestrated and  
4 agreed to through bilateral telephone calls among senior executives and sales  
5 personnel at each company.

6 77. The FAO reported that canned tuna wholesale and retail prices in the  
7 United States increased by 10.9% and 6.6%, respectively, between 2010 and 2012.  
8 At the same time, canned tuna consumption continued to decline across the United  
9 States, falling by 7.7% between 2011 and 2012. One FAO newsletter noted in  
10 December of 2012 that “[s]luggish demand for canned tuna continues in the US  
11 market. Under the current economic conditions consumers are reluctant to accept  
12 higher canned tuna prices, while supermarkets are unable to promote the product as  
13 a low-priced item as they could in the past.” Thus, Defendants’ pricing conduct was  
14 contrary to the individual self-interest of each of them.

15 78. These price increases in 2011-12 achieved Lischewski of Bumble Bee’s  
16 goal of ensuring that the industrywide prices for canned tuna were no longer “too  
17 cheap.” Lischewski himself noted in a July 2012 interview that “we believe the  
18 market will adjust to the new price levels over the next year as tuna remains a  
19 healthy and affordable protein.” He went on to add that “[u]nfortunately, higher  
20 prices—*up more than 40 percent over the last 18 months*—are negatively  
21 impacting overall consumption and promotional sales volume is down as retailers  
22 are not able to achieve the ‘hot’ price points that historically enabled them to drive  
23 tuna volume.” (Emphases added). Thus, Lischewski was conceding that the  
24 previous 18 months of price increases were driving down consumer demand and  
25 promotional volume--again something contrary to the individual self-interest of  
26 CoS, Bumble Bee and StarKist. Likewise, in a March 2012 interview, In-Soo Cho  
27 (“Cho”) (former President and CEO of StarKist) stated that the company was taking  
28

1 action to increase prices. He said that “[i]n America, all they have done is say: ‘two  
2 cans for a dollar, three cans for a dollar’—but that has to change.”

3 79. The 2011-12 list price increases set benchmarks that affected all  
4 subsequent list prices of canned tuna.

### 5 **3. Collusion On Promotional Activity.**

6 80. In order to ensure that their various collusive price increases were not  
7 eroded, Defendants also colluded on limiting promotional activity. For example,  
8 commencing in at least May of 2012 and continuing through at least June of 2013,  
9 there were bilateral communications involving executives from each of the three  
10 companies that were conducted through e-mails and telephone calls on the  
11 coordination of promotions for canned tuna. As an example, one company  
12 executive would call another about what was perceived to be an aggressive  
13 promotion and was assured that it was limited in nature and was not intended to  
14 upset agreed-upon market prices.

### 15 **4. Collusion On Offering “FAD Free” Branded Tuna Products.**

16 81. The Defendants also conspired not to compete by collectively agreeing  
17 not to offer branded tuna products that were labeled as being “FAD free.”

18 82. As early as November of 2011, Lischewski of Bumble Bee, Chan of  
19 Tri-Union and CoS, and Cho of StarKist had collaborated on an article attacking  
20 Greenpeace and other environmental groups for criticizing the way tuna is  
21 harvested. The issue of sustainability came up in late 2011 in debates within the  
22 National Fisheries Institute (“NFI”), which had been founded in 2007 with the  
23 support of Thai processors and to which StarKist, Bumble Bee and CoS belonged.

24 83. Separately from these debates, the three companies entered into an  
25 agreement not to compete on the sale of “FAD free” canned tuna. Each company  
26 agreed that it would not sell any FAD free product under its own label, despite  
27 strong and growing demand by consumers for FAD free products. Senior  
28 executives at StarKist, Bumble Bee and CoS began discussions in e-mails on this

1 topic in late 2011, and reached agreement in a telephone conference among all three  
2 companies during the week of February 6, 2012. The participants in the conspiracy  
3 confirmed the agreement in an e-mail dated February 17, 2012. By this agreement,  
4 the Defendants ensured that they did not compete on the dimension of advertising  
5 the sustainably-caught nature of any of their branded tuna products.

6 84. Defendants' agreement not to compete by producing branded canned  
7 tuna labeled "FAD Free" had the effect of ensuring that such canned tuna, which  
8 would be more costly to produce and have a lower profit margin, did not  
9 cannibalize sales of their products subject to the price-fixing conspiracy.

#### 10 **5. Other Opportunities To Collude.**

11 85. In addition to secret e-mails and telephone calls described above, the  
12 Defendants had numerous other opportunities to meet and collude.

13 86. One such opportunity is provided by the previously-mentioned annual  
14 Infofish conventions held in Bangkok, Thailand during the Class Period.

15 87. Another was provided by the Tuna Council of the aforementioned NFI.  
16 As explained on the NFI's website:

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

24 88. Bumble Bee, CoS and StarKist jointly sponsored the "Tuna the  
25 Wonderfish" advertising campaign of 2011-12 under the auspices of the Tuna  
26 Council to remedy the perception that canned tuna was a "cheap" product. This  
27 campaign was bankrolled by the three companies and the Defendants teamed up for  
28 collective marketing purposes. Joe Tuza, former Senior Vice-President of  
Marketing for StarKist, reportedly said that "[w]e worked together surprisingly  
well." He said further that the campaign, intended to increase consumption of tuna,

1 was based on the hope that “as the water level rises...all boats rise with the tide”,  
2 referring to the three aforementioned companies. The same philosophy was applied  
3 in Defendants’ subsequent collusive activities with respect to list price increases  
4 and promotions.

5 89. Yet another opportunity to collude was provided through meetings of  
6 the ISSF. Lischewski is the chair of that organization.

7 90. A further opportunity to collude was provided through bilateral co-  
8 packing agreements between Bumble Bee and CoS entered into in 2011. Bumble  
9 Bee co-packs seafood for CoS at the former’s plant located in Santa Fe Springs,  
10 California, with respect to West Coast sales. CoS does the same for Bumble Bee at  
11 the former’s plant in Lyons, Georgia with respect to East Coast sales. Indeed, in  
12 March of 2016, Bumble Bee had to recall 2,745 cases of canned tuna packed for it  
13 by CoS. Thus, even before the proposed merger, these two companies were  
14 cooperating and communicating closely. These interlocking relationships provided  
15 additional opportunities to collude on pricing.

16 91. The interlocking relationships among Defendants are also demonstrated  
17 by the movement of executives among the companies. For example, in July of  
18 2014, Brett Butler, the former Plant Manager of StarKist’s plant in American  
19 Samoa, left the company to join Bumble Bee, and relocated to Bumble Bee’s San  
20 Diego headquarters, where CoS is also based. It was only a few months later, in  
21 December of 2014, that the proposed acquisition of Bumble Bee by CoS was  
22 announced. Likewise, prior to joining Bumble Bee in 1999, Lischewski had been a  
23 top executive of StarKist, having been its Vice-President of Global Procurement  
24 and Business Operations in 1991-96 and its Group Vice-President of Global  
25 Procurement and Operations in 1996-98. Such movement of executives and the  
26 common friendships that were formed fostered collusion among all three  
27 companies.

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**E. Involvement Of High Level Executives In The Conspiracy.**

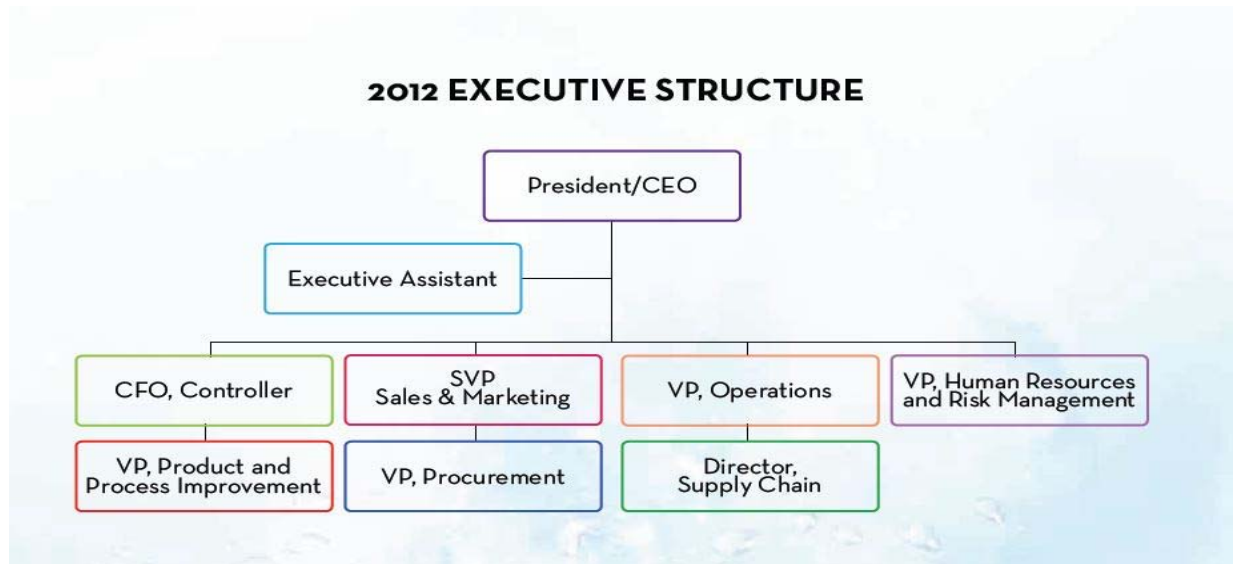
92. The aforementioned practices involving collusion on list prices, promotional activities and refraining from offering “FAD Free” branded tuna products were conducted by the highest executives of StarKist, Bumble Bee and CoS.

93. As public records reflect, among the top management who led Bumble Bee after its spin-off from ConAgra in 2003 were Lischewski and Lawrence Hathaway (COO and former President). Other key personnel who led Bumble Bee during the Class Period included: (a) David Melbourne, Jr. (“Melbourne”) (Senior Vice-President of Marketing, who joined the company in 2005); (b) Ken Worsham (Senior Vice-President of Trade Marketing); and (c) Scott Cameron (“Cameron”) (Senior Vice-President of U.S. Sales).

94. For StarKist, the key executives who led the company during the class period included: (a) Choe (President and CEO from November of 2014 on and Senior Vice-President of its supply chain and Director of Strategic Planning and Development from 2010 until he became President); (b) Sam Hwi Lee (President and CEO from November of 2012 to September of 2014 and a member of StarKist’s Board of Directors since 2008); (c) Cho (President and CEO from March of 2011 to October of 2012); (d) In-gu Park (Acting President from November of 2010 to March of 2011); and (e) Nam-Jung Kim (COO from 2012 to October of 2014).

95. Tri-Union’s management structure is relatively lean, as reflected in the following organization chart.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



96. Thus, in 2012, the top leadership of Tri-Union consisted only of nine people. As noted above, the company was headed during the class period by Chan, who became its President and CEO in November of 2007.

97. In March of 2013, Roszmann was added as a COO for Tri-Union and he served at that position through December of 2015. As noted above, he claims in his LinkedIn profile that “all functions” reported to him and that he “[m]anaged key external relationships (e.g., Board of Directors, Washington DC lobbying, large external suppliers, and key relationships at top customers).”

98. Other key executives who served the company during the Class Period included: (a) Don George (Senior Vice-President of Marketing, who has been with CoS since at least the 1990s); (b) Dennis Hixson (Vice-President of Sales, who joined the company in March of 2005); (c) John Sawyer (Senior Vice-President of Sales & Marketing, who joined the company in January of 2006); (d) Anthony Montoya (Senior Vice-President); and (e) Christie Fleming (Senior Vice-President of Marketing).



1           **F. Foreign Parents' Recognition Of The Conspiracy And Its Results.**

2           99. TUG, Dongwon, and Lion were all fully aware of what was happening  
3 in the United States market for PSPs and, as averred above, the first two  
4 participated directly in the conspiracy.

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

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

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

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

25                           With respect to earnings development under our  
26                           ownership, Bumble Bee maintained and grew gross  
27                           margins *through disciplined pricing actions*, leading to  
28                           adjusted EBITDA climbing to over \$150 million this

1 year, the highest level of EBITDA in the company's  
2 history. (Emphases added).

3 103. And Dongwon has stated that “[t]he canned tuna market in the U.S. is  
4 approximately a \$1,700,000,000 USD market, but it is a *mature market where*  
5 *growth has stopped, and it maintains an oligopolistic system* with Starkist Co.  
6 (40%), Bumble Bee (25%), and Chicken of the Sea (15%), and *represents a*  
7 *structure in which the price of tuna cannot be efficiently reflected in the sales*  
8 *price of products.*” (Emphases added).<sup>11</sup>

9 104. The “reasonable market conditions”, “more rational market  
10 competition”, “sensible market competition”, avoidance of battles for market share,  
11 “absence of cut throat pricing”, pricing structure that fails to efficiently reflect input  
12 costs, and pricing “discipline” that the various Defendants’ reports and statements  
13 note came about through collusion. In a truly competitive market, it would have  
14 been in the individual self-interest of each Defendant to increase market share  
15 during this period of declining costs and declining demand by lowering prices and  
16 offering more promotions.

17 105. TUG, Dongwon and Lion all directly profited as a result of the  
18 conspiracy.

19 106. As noted above, Lion saw substantial increases of Bumble Bee’s gross  
20 margins in recent years.

21 107. Similarly, Dongwon registered substantial additional income in the  
22 period following the series of list price increases described above.

23 108. Likewise, TUG stated in its 2014 Annual Report stated that “[t]he  
24 overall gross margin of tuna in 2014 improved to 17.0 percent (from 12.5 percent in  
25 2013) mainly due to gross margin expansion of branded business from lower fish  
26 costs, price adjustments of EU operation in early 2014 as well as *rational market*  
27 *competition in the US.*” (Emphases added).

28 <sup>11</sup> The foregoing quotation is a translation from the Korean language.

1 **VIII. CLASS ACTION ALLEGATIONS**

2 109. Plaintiffs bring this action on behalf of themselves and as a class action  
3 pursuant to Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure on  
4 behalf of the following Class (the “Class”):

5 All persons and entities that directly purchased packaged  
6 seafood products within the United States, its territories  
7 and the District of Columbia from any Defendant or any  
8 predecessor, subsidiary or affiliate thereof, at any time  
9 between August 1, 2008 and the present. Excluded from  
10 the class are governmental entities, Defendants, any  
11 parent, subsidiary or affiliate thereof, and Defendants’  
12 officers, directors, employees, and immediate families.

13 Plaintiffs reserve the right to amend the Class definition as additional facts become  
14 known through discovery.

15 110. Plaintiffs do not know the exact number of members of the Class  
16 because such information is in the exclusive control of Defendants. Due to the  
17 nature of the trade and commerce involved, however, Plaintiffs believe that Class  
18 members number at least in the thousands and are sufficiently numerous and  
19 geographically dispersed throughout the United States, its territories and the  
20 District of Columbia so that joinder of all Class members is impracticable.

21 111. There are questions of law and fact which are common to the claims of  
22 Plaintiffs and the Class, including, but not limited to:

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

26 b. Whether Defendants engaged in a combination or conspiracy  
27 with their co-conspirators to refrain from selling branded canned tuna labeled as  
28 “FAD Free”;

1 c. Whether the purpose and/or effect of the acts and omissions  
2 alleged herein was to restrain trade, or to affect, fix, control, and/or maintain the  
3 prices for PSPs;

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

6 e. Whether Defendants violated Sections 1 and 3 of the Sherman  
7 Act (15 U.S.C. §§ 1, 3);

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

13 g. Whether, and to what extent, the conduct of Defendants caused  
14 injury to Plaintiffs and members of the Class, and, if so, the appropriate measure of  
15 damages; and

16 h. Whether Plaintiffs and members of the Class are entitled to  
17 injunctive relief to prevent the continuation or furtherance of the violation of  
18 Sections 1 and 3 of the Sherman Act.

19 112. Plaintiffs' claims are typical of the claims of the members of the Class.

20 113. Plaintiffs will fairly and adequately assert and protect the interests of  
21 the Class. Plaintiffs' interests are coincident with, and not antagonistic to, those of  
22 the other members of the Class.

23 114. Plaintiffs are represented by counsel competent and experienced in the  
24 prosecution of antitrust and class action litigation.

25 115. The questions of law and fact common to the members of the Class  
26 predominate over any questions affecting only individual members.  
27  
28

1 116. A class action is superior to other available methods for the fair and  
2 efficient adjudication of this controversy because:

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

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

8 c. Prosecution as a class action will eliminate the possibility of  
9 repetitious litigation.

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

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

17 117. This class action presents no difficulties of management that would  
18 preclude its maintenance as a class action.

19 **IX. TOLLING OF THE STATUTE OF LIMITATIONS**

20 118. Plaintiffs had neither actual nor constructive knowledge of the facts  
21 constituting its claim for relief.

22 119. Plaintiffs and members of the Class did not discover, and could not  
23 have discovered through the exercise of reasonable diligence, the existence of the  
24 conspiracy alleged herein until at least July of 2015. Indeed, the conspiracy was  
25 apparently only uncovered by DOJ in the process of reviewing internal company  
26 documents relating to the proposed merger between CoS and Bumble Bee.

27 120. Defendants engaged in a secret conspiracy and did not reveal facts that  
28 would put Plaintiffs or the Class on inquiry notice that there was an agreement to

1 fix prices for PSPs. By their very nature, price-fixing conspiracies are inherently  
2 self-concealing. Plaintiffs believe that Defendants agreed among themselves to  
3 conceal their unlawful conspiracy, including by agreeing not to discuss the  
4 conspiracy publicly and by other means of avoiding detection and maintaining  
5 secrecy, such as the use of nonpublic e-mails and private telephone calls, as  
6 described above. Accordingly, Plaintiffs could not have had either actual or  
7 constructive knowledge of the price fixing scheme until the public disclosure of the  
8 DOJ's criminal investigation.

9         121. Defendants also gave pretextual reasons for their price increases in  
10 order to conceal their unlawful conduct. For example, in connection with the  
11 reduction of can sizes in 2008-09, Defendants asserted that it was due to high input  
12 costs or similar causes. Similarly, in connection with the 2011-12 price increases  
13 discussed above, CoS, StarKist, and Bumble Bee attributed the changes to rising  
14 costs, a weakening United States dollar, or other factors. Examples of these  
15 pretextual statements include: (a) a March 2011 letter from Bumble Bee to  
16 customers saying that canned tuna price increases were due to "increases in the  
17 costs of protein, packaging, and transportation and fuel over the last two years"; (b)  
18 a June 2011 letter from CoS attributing price increases to "persistent global  
19 inflationary trends" and "increased raw material costs and a weak U.S. dollar; (c) a  
20 July 2011 StarKist letter announcing price increases for canned tuna that were  
21 attributed to "continuously rising fish costs"; (d) a January 2012 CoS letter saying  
22 that "[h]igh fish prices have made it necessary to increase the list price of both light  
23 and white [tuna]. All indicators are that these higher raw material costs will not  
24 return to levels that were seen as recently as a year ago"; (e) Melbourne of Bumble  
25 Bee saying in an August 2012 *Intrafish* article that "[t]he leading brands took  
26 pricing action due to escalating fish costs"; and (f) Cameron of Bumble Bee saying  
27 in a March 2012 letter to customers that "unforecasted elements", some of which  
28 would occur in the latter part of 2012, necessitated canned tuna price increases.

1 None of these communications ever mentioned Defendants’ collusion or the fact  
2 that, as DOJ’s Baer has stated, their industry was “not functioning competitively.”

3 122. Defendants thus actively misled their customers about the price-fixing  
4 scheme. Their various justifications for price increases did not disclose that they  
5 had agreed among themselves to fix, raise and/or stabilize the price of  
6 PSPs. Defendants’ justifications for their price increases were also misleading, to  
7 the extent they were true even in part, because of their failure to disclose that the  
8 price increases in fact resulted from their illegal agreement and conspiracy.

9 123. Because Defendants’ agreement, understanding and conspiracy was  
10 kept secret, Plaintiffs and members of the Class were unaware of Defendants’  
11 unlawful conduct alleged herein and did not know that they were paying artificially  
12 high prices for PSPs during the Class Period.

13 **X. CAUSE OF ACTION.**

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

15 124. Plaintiffs incorporate by reference the preceding paragraphs as if fully  
16 set forth herein.

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

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

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

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

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

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

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

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

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

16                                   **XI. PRAYER FOR RELIEF**

17           WHEREFORE, Plaintiffs pray:

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

22           B.       That the Court adjudge and decree that the contract, combination and  
23 conspiracy alleged herein is a *per se* unreasonable restraint of trade in violation of  
24 Sections 1 and 3 f the Sherman Act;

25           C.       That the Court enter judgment against Defendants, jointly and  
26 severally, in favor of Plaintiffs and the Class;

27           D.       That the Court award Plaintiffs and the Class treble damages;

28



1 E. That the Court award Plaintiffs and the Class attorneys' fees and costs  
2 as well as pre-judgment and post-judgment interest as permitted by law;

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

11 G. That the Court award Plaintiffs and the Class such other and further  
12 relief as may be deemed necessary and appropriate.

13 **XII. JURY DEMAND**

14 Pursuant to Fed. R. Civ. P. 38(c), Plaintiffs demand a trial by jury on all  
15 matters so triable.

16 Dated: May 23, 2016

Respectfully submitted,

17  
18 By: /s/ Bonny E. Sweeney

19 Michael P. Lehmann (Cal. Bar No. 77152)

Bonny E. Sweeney (Cal. Bar No. 176174)

20 Christopher L. Lebsock (Cal. Bar No.

21 184546)

22 HAUSFELD LLP

600 Montgomery Street, Suite 3200

23 San Francisco, CA 94111

24 Tel: (415) 633-1908

Fax: (415) 358-4980

25 E-mail: mlehmann@hausfeld.com

26 E-mail: bsweeney@hausfeld.com

E-mail: clebsock@hausfeld.com

27 Michael D. Hausfeld

28 James J. Pizzirusso

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

HAUSFELD LLP  
1700 K Street NW, Suite 650  
Washington, DC 20006  
Telephone: (202) 540-7200  
Facsimile: (202) 540-7201  
E-mail: mhausfeld@hausfeld.com  
E-mail: jpizzirusso@hausfeld.com

*Counsel for Plaintiff Olean Wholesale  
Grocery Cooperative, Inc. and Interim Lead  
Counsel for the Direct Purchaser Class*

Arthur N. Bailey  
Marco Cercone  
RUPP BASE PFALZGRAF  
CUNNINGHAM LLC  
1600 Liberty Building  
424 Main Street  
Buffalo, New York 14202  
Telephone: (716) 664-2967  
Facsimile: (716) 664-2983  
E-mail: bailey@ruppbaase.com  
E-mail: cercone@ruppbaase.com

*Additional Counsel for Plaintiff Olean  
Wholesale Grocery Cooperative, Inc.*

Barbara Hart  
Sung-Min Lee  
LOWEY DANNENBERG COHEN  
& HART, P.C.  
200 Barr Harbor Drive, Suite 400  
West Conshohocken, PA 19428  
Telephone: (610) 941-2760

One North Broadway, Suite 509  
White Plains, NY 10601-2301  
Telephone: (914) 997-0500  
Facsimile: (914) 997-0035  
E-Mail: bhart@lowey.com  
E-Mail: slee@lowey.com

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

*Counsel for Plaintiff Pacific Groservice Inc.  
d/b/a PITCO Foods and Member of Direct  
Purchaser Plaintiffs' Steering Committee*

Solomon B. Cera (Cal. Bar No. 99467)  
Thomas C. Bright (Cal. Bar No. 169713)  
Louis A. Kessler (Cal. Bar No. 243703)  
CERA LLP  
595 Market Street, Suite 2300  
San Francisco, California 94105  
Tel: (415) 777-2230  
Fax: (415) 777-5189

C. Andrew Dirksen (Cal. Bar No. 130064)  
CERA LLP  
800 Boylston St., 16th Floor  
Boston, MA 02199  
Tel: (857) 453-6555  
Fax: (415) 777-5189

*Counsel for Plaintiffs Associated Grocers of  
Florida, Inc., Central Grocers, Inc., and  
Piggly Wiggly Alabama Distributing Co.,  
Inc. and Member of Direct Purchaser  
Plaintiffs' Steering Committee*

JOSEPH SAVERI LAW FIRM, INC.  
Joseph R. Saveri (Cal. Bar No. 130064)  
Andrew M. Purdy (Cal. Bar No. 261912)  
Matthew S. Weiler (Cal. Bar No. 236052)  
JOSEPH SAVERI LAW FIRM, INC.  
505 Montgomery Street, Suite 625  
San Francisco, CA 94111  
Telephone: (415) 500-6800  
Facsimile: (415) 395-9940

*Additional Counsel for Plaintiff Central  
Grocers, Inc.*

Jason S. Hartley (CA Bar No. 192514)  
Jason M. Lindner (CA Bar No. 211451)  
STEUVE SEIGEL HANSON LLP

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

550 West C Street, Suite 1750  
San Diego, CA 92101  
Phone: (619) 400-5822  
Fax: (619) 400-5832  
E-mail: hartley@stuevesiegel.com  
E-mail: lindner@stuevesiegel.com  
*Counsel for Plaintiff TrepcO Imports &  
Distribution, Ltd. and Member of Direct  
Purchaser Plaintiffs' Steering Committee*

Abbas Kazerounian (Cal. Bar No. 249203)  
KAZEROUNI LAW GROUP, APC  
245 Fischer Avenue, Suite D1  
Costa Mesa, CA 92626  
Tel: (800) 400-6808  
Fax: (800) 520-5523  
E-mail: ak@kazlg.com

Josh Swigart (Cal. Bar No. 225557)  
HYDE & SWIGART  
2221 Camino del Rio South, Ste. 101  
San Diego, CA 92108  
Tel: 619-233-7770  
Fax: 619-297-1022  
E-mail: josh@westcoastlitigation.com

Vincent J. Esades  
(Admitted *Pro Hac Vice*)  
HEINS MILLS & OLSON, P.L.C.  
310 Clifton Avenue  
Minneapolis, MN 55403  
Telephone: (612) 338-4605  
Facsimile: (612) 338-4692  
E-mail: vesades@heinsmills.com

Robert Eisler  
(Admitted *Pro Hac Vice*)  
GRANT & EISENHOFER  
123 Justison Street  
Wilmington, DE 19801  
Telephone: (302) 622-7000  
E-mail: reisler@gelaw.com

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Daniel R. Karon  
(*Pro Hac Vice* Forthcoming)  
KARON LLC  
700 W. St. Clair Avenue  
Suite 200  
Cleveland, OH 44113  
Telephone: (216) 622-1851  
Fax: (216) 241-8175  
E-mail: dkaron@karonllc.com

*Additional Counsel for Plaintiff Trepro  
Imports & Distribution, Ltd.*

Stephen R. Neuwirth  
Sami H. Rashid  
Julia Peck  
Joseph N. Kiefer  
QUINN EMANUEL URQUHART  
& SULLIVAN, LLP  
51 Madison Avenue, 22nd Floor  
New York, NY 10010  
Telephone: (212) 849-7000  
Facsimile: (212) 849-7100  
E-mail:  
stephenneuwirth@quinnemanuel.com  
E-mail: samirashid@quinnemanuel.com  
E-mail: juliapeck@quinnemanuel.com  
E-mail: josephkiefer@quinnemanuel.com

Ronald J. Aranoff  
Dana Statsky Smith  
BERNSTEIN LIEBHARD LLP  
10 East 40th Street  
New York, NY 10016  
Telephone: (212) 779-1414  
Facsimile: (212) 779-3218  
E-mail: aranoff@bernlieb.com  
E-mail: dsmith@bernlieb.com

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

*Counsel for Plaintiff Benjamin Foods LLC  
And Members of Direct Purchaser Plaintiffs’  
Steering Committee*

Whitney E. Street (Cal. Bar No. 223870)  
BLOCK & LEVITON LLP  
520 Third Street, Suite 108  
Oakland, CA 94607  
Telephone: (415) 968-8999  
Facsimile: (617) 507-6020  
E-mail: wstreet@blockesq.com

Erica G. Langsen  
BLOCK & LEVITON LLP  
155 Federal Street, Suite 400  
Boston, MA 02110  
Telephone: (617) 398-5600  
Facsimile: (617) 507-6020  
E-mail: elangsen@blockesq.com

*Member of Direct Purchaser Plaintiffs’  
Steering Committee*

Allan Steyer (Cal. Bar No. 100318)  
D. Scott Macrae (Cal. Bar No. 104663)  
Jill M. Manning (Cal. Bar No. 178849)  
STEYER LOWENTHAL BOODROOKAS  
ALVAREZ & SMITH LLP  
One California Street, Suite 300  
San Francisco, CA 94111  
Telephone: (415) 421-3400  
Facsimile: (415) 421-2234  
E-mail: asteyer@steyerlaw.com  
E-mail: smacrae@steyerlaw.com  
E-mail: jmanning@steyerlaw.com

*Counsel for Plaintiff John Gross &  
Company*