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UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

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AFFILIATED FOODS, INC.,

CASE NO.

13

Plaintiff,

**COMPLAINT FOR VIOLATION
OF THE SHERMAN ACT 15 U.S.C. § 1**

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v.

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TRI-UNION SEAFOODS, LLC, d/b/a
CHICKEN OF THE SEA
INTERNATIONAL; KING OSCAR, INC.;
16 BUMBLE BEE FOODS, LLC, f/k/a
17 BUMBLE BEE SEAFOODS, LLC; and
STARKIST CO.,

DEMAND FOR JURY TRIAL

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Defendants.

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1 Plaintiff Affiliated Foods, Inc. (“Plaintiff”), by and through undersigned counsel,
2 complains as follows:

3 **NATURE OF THE CASE**

4 1. This action arises from a conspiracy to raise, fix, stabilize, or maintain prices,
5 allocate customers, and restrict capacity in the market for shelf-stable packaged seafood,
6 including tuna, clam, crab, mackerel, oyster, salmon, sardines, and shrimp (“Packaged Seafood”)
7 sold in the United States, from at least as early as January 1, 2000, through the present (the
8 “Relevant Period”), by Defendants Tri-Union Seafoods, LLC, d/b/a Chicken of the Sea, King
9 Oscar, Inc., Bumble Bee Foods, LLC f/k/a Bumble Bee Seafoods, LLC, and StarKist Co.
10 (collectively, “Defendants”).

11 2. Plaintiff brings this action to (i) recover treble damages, attorneys’ fees, litigation
12 expenses, and court costs, and (ii) secure injunctive relief for violations of Section 1 of the
13 Sherman Act of 1890 (“Sherman Act”), 15 U.S.C. § 1, pursuant to Sections 4 and 16 of the
14 Clayton Act of 1914 (“Clayton Act”), 15 U.S.C. §§ 15 and 26.

15 3. As alleged more fully below, by early 2000, growth in the Packaged Seafood
16 industry had slowed, and the prospects for growth were dim. Beginning at least as early as
17 January 2000, in an effort to combat the prospect of diminishing profits, Defendants and their co-
18 conspirators conspired to raise, fix, stabilize, or maintain prices, allocate customers, and restrict
19 capacity in the market for Packaged Seafood sold in the United States. As a direct and proximate
20 result of Defendants’ cartel activities, Plaintiff was overcharged by Defendants for Packaged
21 Seafood.

22 **JURISDICTION AND VENUE**

23 4. This Court has jurisdiction over the subject matter of this action pursuant to
24 Section 4(a) and 16 of the Clayton Act, 15 U.S.C. §§ 15(a) and 26, and 28 U.S.C. §§ 1331 and
25 1337.

26 5. Defendants and their co-conspirators engaged in conduct both inside and outside
27 the United States that caused direct, substantial, and reasonably foreseeable and intended
28 anticompetitive effects upon interstate commerce within the United States, and upon import trade

1 and commerce with the United States.

2 6. Venue is proper in this district pursuant to Sections 4(a) and 12 of the Clayton Act,
3 15 U.S.C. §§ 15(a) and 22, and 28 U.S.C. §§ 1391 (b), (c), and (d), because a substantial part of
4 the events giving rise to Plaintiff's claims occurred in this district, a substantial portion of the
5 affected interstate trade and commerce discussed below has been carried out in this district, and
6 one or more Defendants reside, are found, have agents, are licensed to do business, are doing
7 business, or transact business in this district.

8 7. This Court has in personal jurisdiction over each Defendant because, inter alia,
9 each Defendant: (a) transacted business in the United States, including in this district; (b) directly
10 or indirectly sold or marketed substantial quantities of Packaged Seafood throughout the United
11 States, including in this district; (c) had substantial aggregate contacts with the United States as a
12 whole, including in this district; or (d) was engaged in an illegal price-fixing conspiracy that was
13 directed at, and had a direct, substantial, reasonably foreseeable, and intended effect of causing
14 injury to, the business or property of persons and entities residing in, located in, or doing business
15 throughout the United States, including in this district.

16 **PARTIES**

17 **A. Plaintiff**

18 7. Plaintiff Affiliated Foods, Inc. is a Texas corporation with its principal place of
19 business in Amarillo, Texas. Plaintiff is a wholesale grocery and restaurant supply company.
20 During the Relevant Period, Plaintiff purchased Packaged Seafood directly from one or more
21 Defendants, and has been injured in its business or property by reason of the antitrust violations
22 alleged in this complaint.

23 **B. Defendants**

24 8. Defendant Tri-Union Seafoods, LLC, d/b/a Chicken of the Sea International
25 ("COTS") is a Delaware corporation with its principal place of business at 4510 Executive Drive,
26 # 3, San Diego, CA 92121.

27 9. Defendant King Oscar, Inc. ("KOI") is a Delaware corporation with its principal
28 place of business at 3838 Camino Del Rio North, Suite 115, San Diego, CA 92108.

1 10. Defendants COTS and KOI (together, “Tri-Union”) are wholly-owned subsidiaries
2 of Thai Union Frozen Products Public Company, Ltd. (“Thai Union”), a publicly held company
3 headquartered in Thailand.

4 11. Defendant Bumble Bee Foods, LLC, f/k/a Bumble Bee Seafoods, LLC (“Bumble
5 Bee”) is a Delaware corporation with its principal place of business at 9655 Granite Ridge Drive,
6 Suite 100, San Diego, CA 92123. Bumble Bee is a wholly-owned subsidiary of Lion Capital, a
7 private investment firm headquartered in Great Britain.

8 12. Defendant StarKist Co. (“StarKist”) is a Delaware corporation with its principal
9 place of business at 225 North Shore Drive, Suite 400, Pittsburgh, PA 15212. StarKist is a
10 wholly-owned subsidiary of Dongwon Enterprises Co., which is headquartered in Korea.

11 13. Defendants and their co-conspirators directly and through their affiliates sold
12 Packaged Seafood in the United States and in this district at artificially inflated prices during the
13 Relevant Period. Defendants are direct competitors in the United States Packaged Seafood
14 market.

15 **AGENTS AND CO-CONSPIRATORS**

16 14. Each Defendant acted as the principal of, or agent for, all other Defendants with
17 respect to the acts, violations, and common course of conduct described in this complaint.

18 15. Various other persons, firms, companies, and corporations not named as
19 Defendants have knowingly and willingly conspired with Defendants, and performed acts and
20 made statements in furtherance of the conspiracy and in furtherance of the anticompetitive
21 conduct.

22 16. The acts alleged to have been done by any Defendant or co-conspirator were
23 authorized, ordered, or done by its directors, officers, managers, agents, employees, or
24 representatives while actively engaged in the management, direction, or control of such
25 Defendant’s or co-conspirator’s affairs.

26 **INTERSTATE TRADE AND COMMERCE**

27 17. Defendants Tri-Union, Bumble Bee, and StarKist are the leading manufacturers of
28 Packaged Seafood sold in the United States.

1 18. The referenced Packaged Seafood products are produced by Defendants or their
2 affiliates in either the United States or overseas.

3 19. During the Relevant Period, Tri-Union, Bumble Bee, and StarKist, directly or
4 through one or more of their affiliates, sold Packaged Seafood throughout the United States in a
5 continuous and uninterrupted flow of interstate commerce, including through and into this judicial
6 district.

7 20. The activities of Defendants and their co-conspirators were within the flow of, and
8 intended to, and did, have a substantial effect on interstate commerce in the United States.

9 21. Defendants' and their co-conspirators' conduct, including the marketing and sale
10 of Packaged Seafood, took place within, and has had, and was intended to have, a direct,
11 substantial, and reasonably foreseeable anticompetitive effect upon interstate commerce within
12 the United States and upon import commerce with foreign nations.

13 22. The restraints alleged in this complaint have directly and substantially affected
14 interstate commerce in that Defendants have deprived Plaintiff of the benefits of free and open
15 competition in the purchase of Packaged Seafood within the United States.

16 23. Defendants' agreement to inflate, fix, raise, maintain, or artificially stabilize prices
17 of Packaged Seafood, and their actual inflating, fixing, raising, maintaining, or artificially
18 stabilizing Packaged Seafood prices, were intended to have, and had, a direct, substantial, and
19 reasonably foreseeable effect on United States commerce and on import trade and commerce with
20 the United States.

21 **FACTUAL ALLEGATIONS**

22 **A. Background**

23 24. Packaged Seafood is composed of raw seafood that is processed to preserve and
24 enhance flavor, and ensure product safety. Because it is typically caught far offshore, raw seafood
25 is usually delivered to canneries frozen or refrigerated.

26 25. Upon delivery to a processing plant, an initial quality control inspection is
27 performed to ensure the seafood was stored and transported at the proper temperature and is in
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1 acceptable condition. The seafood is maintained at temperatures ranging from 0°Celsius to -18°C
2 until processing. Seafood passing the initial quality control inspection is prepared for packaging.

3 26. Accepted seafood is initially transferred to large ovens for “pre-cooking.” After
4 further cleaning, the seafood is fed into filling machines where product packages (either cans,
5 pouches, or cups) are filled with pre-set amounts. Filled packages are moved to sealing machines
6 where they are closed and sealed.

7 27. Each package is affixed with a permanent production code identifying plant,
8 product, date packed, batch, and other information. Filled and sealed packages are then cooked
9 under pressure to make the products commercially sterile and give them a long shelf life.

10 28. All three Defendants sell Packaged Seafood in the United States. StarKist, Bumble
11 Bee and Tri-Union all sell packaged tuna, clams, salmon, and sardines. Bumble Bee and Tri-
12 Union also sell packaged crabs, mackerel, oysters, and shrimp.

13 29. The United States Packaged Seafood industry generates annual sales of
14 approximately \$2.6 billion. Tuna is the largest category within Packaged Seafood, generating
15 estimated annual sales of approximately \$1.7 billion.

16 30. Defendants dominated the United States market for Packaged Seafood throughout
17 the Relevant Period. In 2001, Defendants had a combined market share of 85%, which is
18 approximately the same percentage they have today: StarKist 36-40%; Bumble Bee 25%; and Tri-
19 Union 20%.

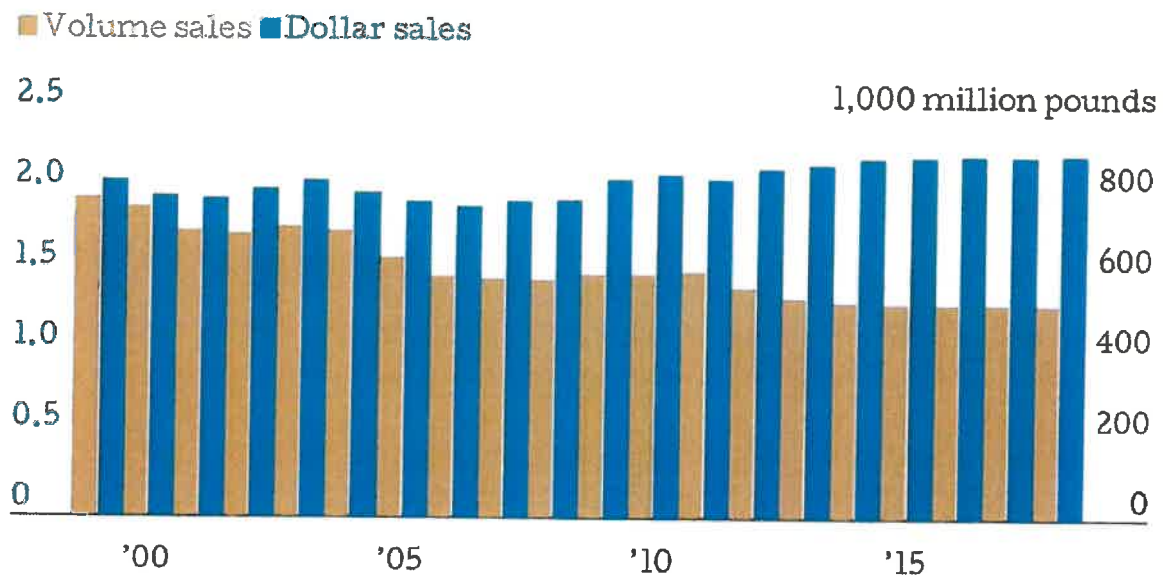
20 31. After decades of growth, demand for Packaged Seafood has been declining since
21 2000. From about 1950 until 2000, packaged tuna was the most popular seafood in the United
22 States. In 1990, the International Trade Commission estimated that Americans consumed between
23 one-half and two-thirds of the global supply of packaged tuna.

24 32. Since the 1990s, health and sustainability concerns, which range from fears of
25 mercury poisoning to fury over dolphin bycatch, have taken their toll. So, too, has a national shift
26 away from packaged seafood.

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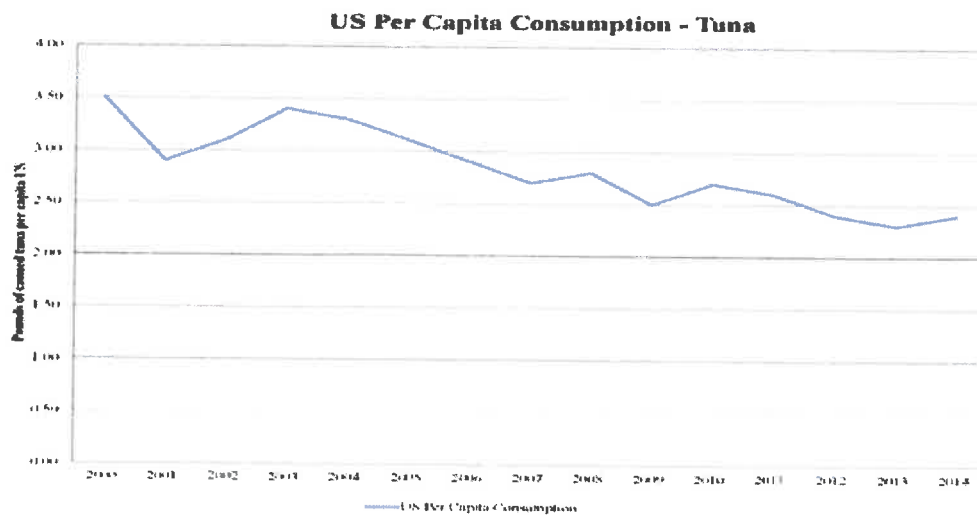
1 33. As a result, domestic consumption of Packaged Seafood has experienced a steady
 2 decline since 2000 (see Figure 1 below). Yet, the prices of Packaged Seafood increased steadily
 3 from 2000 to 2015.

4 **Figure 1**



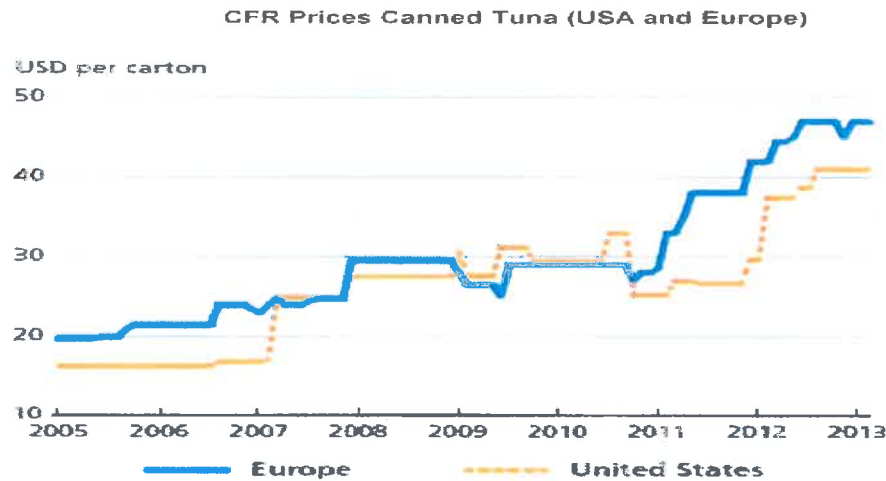
16 34. In particular, packaged tuna saw a steady decline in U.S. per capita consumption
 17 from 3.5 to 2.4 pounds per person per annum between 2000 and 2014 (see Figure 2 below).

18 **Figure 2**



1 35. However, since 2005, the price of packaged tuna has skyrocketed (see Figure 3
2 below).

3 **Figure 3**



14 36. In a competitive environment, a decline in demand for a product will normally
15 lead to a decline in the price of that product. However, because Defendants controlled the market
16 and agreed with each other to restrict capacity, allocate customers, and fix the prices of Packaged
17 Seafood, the prices of Packaged Seafood were intentionally and collaboratively set at artificially
18 high levels throughout the Relevant Period.

19 37. These price increases since the beginning of 2000 were a direct result of
20 Defendants' conspiracy to restrict capacity, allocate customers, and fix the prices of Packaged
21 Seafood in the United States. As a result, Plaintiff paid artificially inflated prices for Packaged
22 Seafood purchased from the Defendants.

23 **B. Defendants' Anticompetitive Conspiracy**

24 38. Beginning at least as early as January 2000 and continuing to the present,
25 Defendants Tri-Union, Bumble Bee, and StarKist participated together in anticompetitive
26 communications, including telephone calls (sometimes multiple times a day) and frequent face-
27 to-face meetings at pre-arranged locations, including hotels and restaurants. During these
28 meetings and telephone calls, Defendants shared sensitive business information, and entered into

1 agreements to fix, raise, stabilize, and maintain prices of Packaged Seafood sold to customers in
2 the United States.

3 39. Senior executives of the three companies met at least twice a year.

4 40. At other times, top executives regularly discussed prices and shared sensitive
5 customer information.

6 41. Throughout the Relevant Period, Defendants communicated regularly by telephone
7 to discuss prices and sensitive customer information. For example, during at least one telephone
8 conversation between Bumble Bee and Starkist executives, Starkist informed Bumble Bee that
9 StarKist and Tri-Union were in agreement to raise prices.

10 42. As part of the conspiracy, Defendants discussed pricing, and agreed to coordinate
11 the timing and amount of price increases for Packaged Seafood sold to customers in the United
12 States. Defendants also agreed to restrict capacity and allocate customers.

13 43. Defendants agreed to exchange, and did exchange, information during their
14 telephone conversations and meetings for the purpose of monitoring and enforcing adherence to
15 their agreements.

16 44. Defendants had ample opportunities for collusion. Defendants routinely attended
17 trade shows and conferences during which they discussed Packaged Seafood pricing and other
18 aspects of their conspiracy. Defendants also collaborated on many projects during the Relevant
19 Period, including their joint “Tuna the Wonderfish” advertising campaign and the International
20 Seafood Sustainability Foundation.

21 45. The “Tuna the Wonderfish” advertising campaign, which ran from early 2011
22 through early 2012, was designed to stem the tide of declining sales of Packaged Seafood in the
23 United States. The “Tuna the Wonderfish” campaign gave Defendants ample opportunity to
24 conspire to raise and fix Packaged Seafood prices. Although the campaign was unsuccessful in
25 boosting consumption, Defendants nonetheless jointly implemented a price increase in 2012 in
26 the face of falling demand.

27 46. Defendants Bumble Bee and Tri-Union also co-operate on seafood processing and
28 packaging. Bumble Bee co-packs for the West Coast for Tri-Union in Bumble Bee’s Santa Fe

1 Springs, California plant, while Tri-Union returns the favor for the East Coast at its Lyons,
2 Georgia plant.

3 **THE CHARACTERISTICS OF THE UNITED STATES**
4 **PACKAGED SEAFOOD MARKET ARE CONDUCTIVE TO COLLUSION**

5 47. The structure and characteristics of the Packaged Seafood market in the United
6 States are conducive to a price-fixing agreement.

7 48. Packaged Seafood is a commodity product that is sold directly to retail chains and
8 through grocery wholesalers and distributors, such as Plaintiff. Packaged Seafood varieties have
9 similar shelf life, contain similar amounts of seafood, and are marketed in cans, pouches, and
10 cups. Therefore, purchasers of Packaged Seafood are more likely to be influenced by price when
11 making a purchasing decision.

12 49. There are substantial barriers that preclude, or reduce, entry into the Packaged
13 Seafood market, including high start-up costs, manufacturing expertise, access to raw materials,
14 and access to distribution channels. Therefore, Defendants could collectively raise prices without
15 fear of being undercut by new entrants.

16 50. Purchasers routinely source their Packaged Seafood from one of the three
17 Defendants. As a result, Defendants dominate the United States Packaged Seafood market.

18 51. Defendants possessed significant market power to raise prices for Packaged
19 Seafood above competitive levels in the United States.

20 52. There are no economically reasonable substitutes for Packaged Seafood.
21 Alternative seafood, such as frozen seafood or fresh seafood, do not have commensurate shelf
22 lives and require preparation, such as cooking, before they can be consumed.

23 **THE DOJ INVESTIGATION**

24 53. The San Francisco office of the antitrust division of the United States Department
25 of Justice (“DOJ”) is conducting an investigation into anticompetitive practices in the United
26 States Packaged Seafood industry. The DOJ has convened a grand jury. Two of the three largest
27 United States Packaged Seafood manufacturers, Tri-Union and Bumble Bee, have publicly
28 confirmed receipt of grand jury subpoenas.

1 54. On July 23, 2015, Thai Union confirmed that its subsidiary, “Tri-Union Seafoods
2 LLC, operating in the United States under the brand Chicken of the Sea ha[d] received a
3 subpoena requiring the production of relevant information to the DOJ,” and that “Chicken of the
4 Sea is cooperating fully with the investigation.”

5 55. As an indication of the seriousness of the DOJ’s investigation, Thai Union, on
6 July 17, 2015, announced that it had suspended a planned public offering. The company stated
7 that it wanted additional clarity on this investigation before proceeding with the public offering.
8 Thai Union has notified the Securities and Exchange Commission of the suspension.

9 56. On July 23, 2015, Bumble Bee acknowledged receipt of a grand jury subpoena,
10 stating, “The Company did receive a grand jury subpoena relating to a US Department of Justice
11 investigation into potential antitrust violations in the packaged seafood industry. The Company is
12 cooperating fully with the investigation.”

13 57. StarKist has not announced whether it received a grand jury subpoena. Upon
14 information and belief, StarKist applied for admittance into the DOJ’s corporate leniency
15 program to report Defendants’ price-fixing activity and other anticompetitive conduct violative of
16 the Sherman Act § 1 in the United States Packaged Seafood market.

17 58. Upon information and belief, StarKist has been accepted into the DOJ corporate
18 leniency program.

19 **PLAINTIFF SUFFERED ANTITRUST INJURY**

20 59. Defendants’ conspiracy had the following effects, among others:

21 a. Price competition has been restrained or eliminated with respect to
22 Packaged Seafood; and

23 b. The prices of Packaged Seafood have been fixed, raised, maintained, or
24 stabilized at artificially inflated levels.

25 60. During the Relevant Period, Defendants charged supra-competitive prices for
26 Packaged Seafood sold to Plaintiff. By reason of Defendants’ alleged violations of the antitrust
27 laws, Plaintiff has sustained injury to its businesses or property, having paid higher prices for
28 Packaged Seafood than it would have paid absent Defendants’ alleged illegal contract,

1 combination, or conspiracy, and, as a result, has suffered damages in an amount to be determined.
2 This is an antitrust injury of the type the antitrust laws were meant to punish and prevent.

3 **FRAUDULENT CONCEALMENT AND**
4 **TOLLING OF THE STATUTE OF LIMITATIONS**

5 61. Throughout the Relevant Period, Defendants affirmatively and fraudulently
6 concealed their unlawful conduct from discovery by Plaintiff.

7 62. Plaintiff did not discover, and could not have discovered through the exercise of
8 reasonable diligence, which it, in fact, exercised, the existence of the conspiracy and Defendants'
9 and their co-conspirators' involvement in the conspiracy until July 23, 2015, when the DOJ's
10 investigations first became public.

11 63. Because the conspiracy was actively concealed until July 23, 2015, Plaintiff was
12 unaware of Defendants' and their co-conspirators' unlawful conduct, and did not know that it was
13 paying artificially high prices for Packaged Seafood.

14 64. The affirmative acts of Defendants and their co-conspirators, including acts in
15 furtherance of the conspiracy, were wrongfully concealed and carried out in a manner that
16 precluded detection.

17 65. Defendants and their co-conspirators agreed among themselves not to discuss
18 publicly, or otherwise reveal, the nature and substance of the acts and communications in
19 furtherance of their illegal conspiracy.

20 66. Defendants and their co-conspirators met and communicated secretly concerning
21 the pricing and marketing of Packaged Seafood as to avoid detection.

22 67. Plaintiff could not have discovered the alleged conspiracy at an earlier date by the
23 exercise of reasonable diligence because of the deceptive practices and secrecy techniques
24 employed by Defendants and their co-conspirators to avoid detection of, and fraudulently
25 conceal, their contract, conspiracy, or combination. Defendants' conspiracy was fraudulently
26 concealed by various means and methods, including, but not limited to, secret meetings,
27 misrepresentations to customers, and surreptitious communications among Defendants and their
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1 co-conspirators via telephone or in in-person meetings in order to prevent the existence of written
2 records.

3 68. Because the alleged conspiracy was affirmatively concealed by Defendants and
4 their co-conspirators until July 23, 2015, Plaintiff had no knowledge of the alleged conspiracy or
5 any facts or information that would have caused a reasonably diligent person to investigate
6 whether a conspiracy existed.

7 69. None of the facts or information available to Plaintiff prior to July 23, 2015, if
8 investigated with reasonable diligence, could or would have led to the discovery of the conspiracy
9 prior to July 23, 2015.

10 70. As a result of Defendants' and their co-conspirators' fraudulent concealment of the
11 conspiracy, the running of any statute of limitations has been tolled with respect to Plaintiff's
12 claims of anticompetitive conduct alleged in this Complaint.

13 **COUNT I**

14 **VIOLATION OF THE SHERMAN ACT § 1**

15 71. Defendants and their co-conspirators entered into, and engaged in, a contract,
16 combination, or conspiracy in unreasonable restraint of trade in violation of Section 1 of the
17 Sherman Act, 15 U.S.C. § 1.

18 72. Defendants' anticompetitive acts were intentionally directed at the United States
19 Packaged Seafood market, and had a substantial and foreseeable effect on interstate commerce by
20 raising and fixing Packaged Seafood prices throughout the United States.

21 73. The contract, combination, or conspiracy had the following direct, substantial, and
22 reasonably foreseeable effects upon commerce in the United States and upon import commerce:

23 a. Prices charged to, and paid by, Plaintiff for Packaged Seafood were
24 artificially raised, fixed, maintained, or stabilized at supra-competitive levels;

25 b. Plaintiff has been deprived of the benefits of free, open, and unrestricted
26 competition in the United States Packaged Seafood market; and

27 c. Competition in establishing the prices paid for Packaged Seafood has been
28 unlawfully restrained, suppressed, or eliminated.

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JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury.

Dated: August 20, 2015

KAPLAN FOX & KILSHEIMER LLP

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