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NEW ENGLAND, INC.; NORTH CENTRAL
7 *DISTRIBUTORS, LLC; CASH-WA DISTRIBUTING*
CO. OF KEARNEY, INC.; and URM STORES, INC.

8 [Additional Counsel Appear on Signature Page]
9

10 **UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

12
13 ASSOCIATED GROCERS OF NEW
ENGLAND, INC.; NORTH CENTRAL
14 DISTRIBUTORS, LLC; CASH-WA
DISTRIBUTING CO. OF KEARNEY,
15 INC.; and URM STORES, INC.

16 Plaintiffs,

17 v.

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

21 Defendants.
22

CASE NO. 3:15-cv-04187

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

DEMAND FOR JURY TRIAL

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1 Plaintiffs Associated Grocers of New England, Inc., North Central Distributors, LLC,
2 Cash-Wa Distributing Co. of Kearney, Inc., and URM Stores, Inc. (“Plaintiffs”), by and through
3 undersigned counsel, complain as follows:

4 **NATURE OF THE CASE**

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

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

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

23 **JURISDICTION AND VENUE**

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

27 5. Defendants and their co-conspirators engaged in conduct both inside and outside
28 the United States that caused direct, substantial, and reasonably foreseeable and intended

1 anticompetitive effects upon interstate commerce within the United States, and upon import trade
2 and commerce with the United States.

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

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

17 **PARTIES**

18 **A. Plaintiffs**

19 7. Plaintiff Associated Grocers of New England, Inc. is a New Hampshire
20 corporation with its principal place of business in Pembroke, New Hampshire. During the
21 Relevant Period, Plaintiff purchased Packaged Seafood directly from one or more Defendants,
22 and has been injured in its business or property by reason of the antitrust violations alleged in this
23 complaint.

24 8. Plaintiff North Central Distributors, LLC is a Texas corporation with its principal
25 place of business in Dallas, Texas. During the Relevant Period, Plaintiff purchased Packaged
26 Seafood directly from one or more Defendants, and has been injured in its business or property by
27 reason of the antitrust violations alleged in this complaint.

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1 9. Plaintiff Cash-Wa Distributing Co. of Kearney, Inc. is a Nebraska corporation with
2 its principal place of business in Kearney, Nebraska. During the Relevant Period, Plaintiff
3 purchased Packaged Seafood directly from one or more Defendants, and has been injured in its
4 business or property by reason of the antitrust violations alleged in this complaint.

5 10. Plaintiff URM Stores, Inc. is a Washington corporation with its principal place of
6 business in Spokane, Washington. During the Relevant Period, Plaintiff purchased Packaged
7 Seafood directly from one or more Defendants, and has been injured in its business or property by
8 reason of the antitrust violations alleged in this complaint.

9 **B. Defendants**

10 11. Defendant Tri-Union Seafoods, LLC, d/b/a Chicken of the Sea International
11 (“COTS”) is a Delaware corporation with its principal place of business at 4510 Executive Drive,
12 # 3, San Diego, CA 92121.

13 12. Defendant King Oscar, Inc. (“KOI”) is a Delaware corporation with its principal
14 place of business at 3838 Camino Del Rio North, Suite 115, San Diego, CA 92108.

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

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

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

25 16. Defendants and their co-conspirators directly and through their affiliates sold
26 Packaged Seafood in the United States and in this district at artificially inflated prices during the
27 Relevant Period. Defendants are direct competitors in the United States Packaged Seafood
28 market.

AGENTS AND CO-CONSPIRATORS

1
2 17. Each Defendant acted as the principal of, or agent for, all other Defendants with
3 respect to the acts, violations, and common course of conduct described in this complaint.

4 18. Various other persons, firms, companies, and corporations not named as
5 Defendants have knowingly and willingly conspired with Defendants, and performed acts and
6 made statements in furtherance of the conspiracy and in furtherance of the anticompetitive
7 conduct.

8 19. The acts alleged to have been done by any Defendant or co-conspirator were
9 authorized, ordered, or done by its directors, officers, managers, agents, employees, or
10 representatives while actively engaged in the management, direction, or control of such
11 Defendant's or co-conspirator's affairs.

INTERSTATE TRADE AND COMMERCE

12
13 20. Defendants Tri-Union, Bumble Bee, and StarKist are the leading manufacturers of
14 Packaged Seafood sold in the United States.

15 21. The referenced Packaged Seafood products are produced by Defendants or their
16 affiliates in either the United States or overseas.

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

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

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

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1 32. The United States Packaged Seafood industry generates annual sales of
 2 approximately \$2.6 billion. Tuna is the largest category within Packaged Seafood, generating
 3 estimated annual sales of approximately \$1.7 billion.

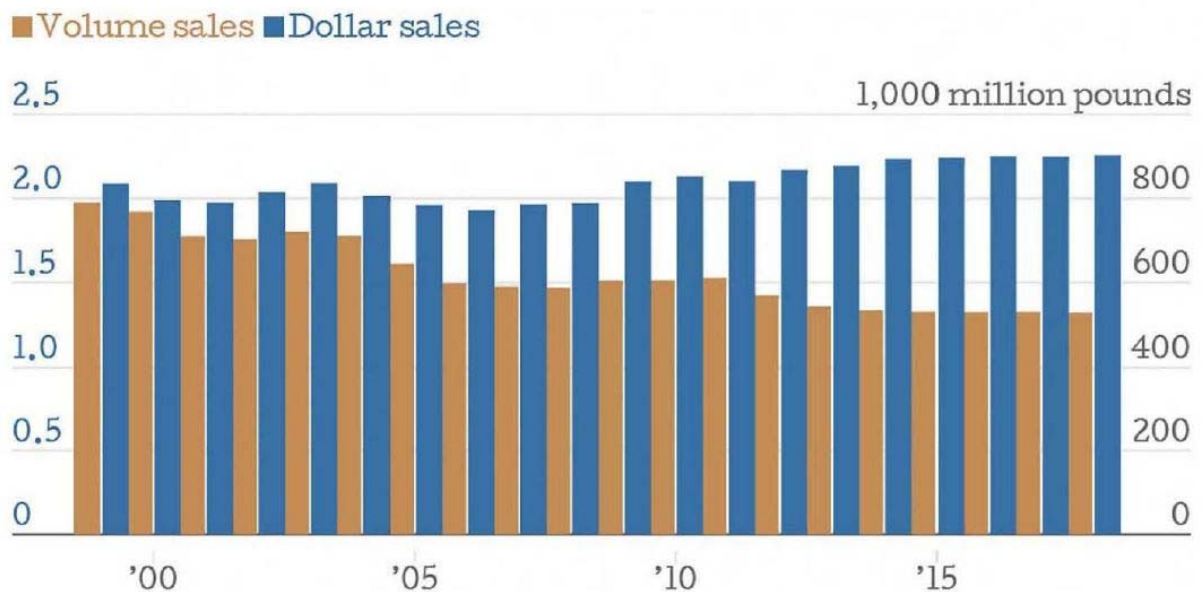
4 33. Defendants dominated the United States market for Packaged Seafood throughout
 5 the Relevant Period. In 2001, Defendants had a combined market share of 85%, which is
 6 approximately the same percentage they have today: StarKist 36-40%; Bumble Bee 25%; and Tri-
 7 Union 20%.

8 34. After decades of growth, demand for Packaged Seafood has been declining since
 9 2000. From about 1950 until 2000, packaged tuna was the most popular seafood in the United
 10 States. In 1990, the International Trade Commission estimated that Americans consumed between
 11 one-half and two-thirds of the global supply of packaged tuna.

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

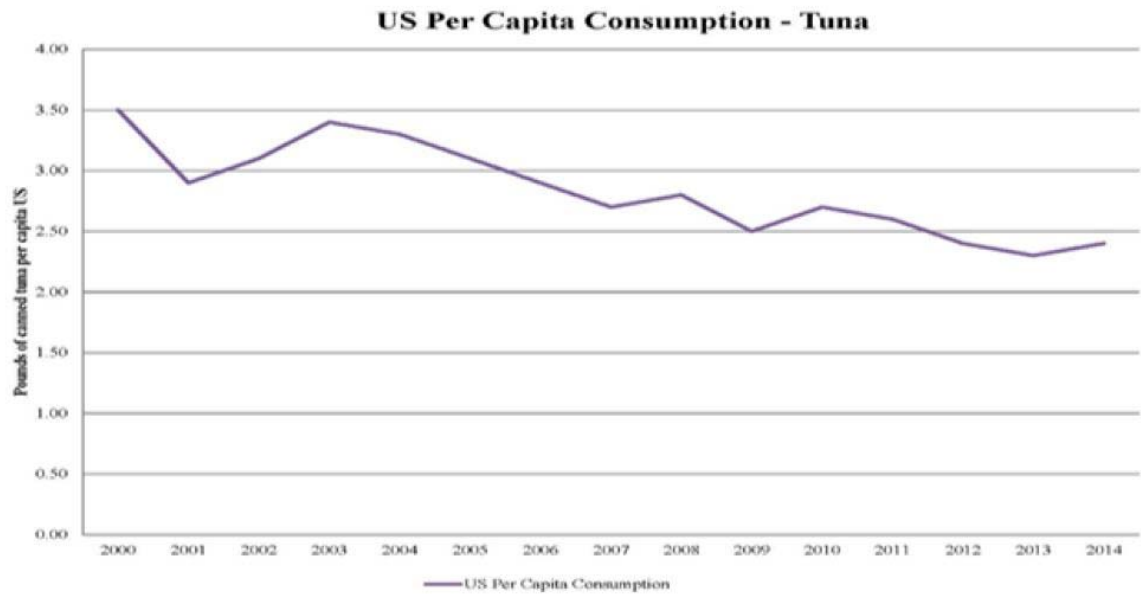
15 36. As a result, domestic consumption of Packaged Seafood has experienced a steady
 16 decline since 2000 (*see* Figure 1 below). Yet, the prices of Packaged Seafood increased steadily
 17 from 2000 to 2015.

18 **Figure 1**



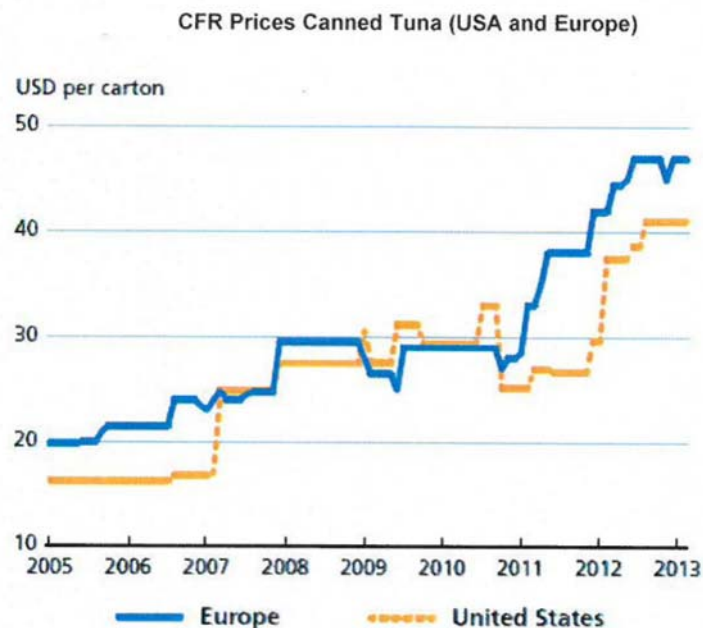
1 37. In particular, packaged tuna saw a steady decline in U.S. per capita consumption
 2 from 3.5 to 2.4 pounds per person per annum between 2000 and 2014 (*see* Figure 2 below).

3 **Figure 2**



15 38. However, since 2005, the price of packaged tuna has skyrocketed (*see* Figure 3
 16 below).

17 **Figure 3**



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

6 40. These price increases since the beginning of 2000 were a direct result of
7 Defendants' conspiracy to restrict capacity, allocate customers, and fix the prices of Packaged
8 Seafood in the United States. As a result, Plaintiffs paid artificially inflated prices for Packaged
9 Seafood purchased from the Defendants.

10 **B. Defendants' Anticompetitive Conspiracy**

11 41. Beginning at least as early as January 2000 and continuing to the present,
12 Defendants Tri-Union, Bumble Bee, and StarKist participated together in anticompetitive
13 communications, including telephone calls (sometimes multiple times a day) and frequent face-
14 to-face meetings at pre-arranged locations, including hotels and restaurants. During these
15 meetings and telephone calls, Defendants shared sensitive business information, and entered into
16 agreements to fix, raise, stabilize, and maintain prices of Packaged Seafood sold to customers in
17 the United States.

18 42. Senior executives of the three companies met at least twice a year.

19 43. At other times, top executives regularly discussed prices and shared sensitive
20 customer information.

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

25 45. As part of the conspiracy, Defendants discussed pricing, and agreed to coordinate
26 the timing and amount of price increases for Packaged Seafood sold to customers in the United
27 States. Defendants also agreed to restrict capacity and allocate customers.

28

1 46. Defendants agreed to exchange, and did exchange, information during their
2 telephone conversations and meetings for the purpose of monitoring and enforcing adherence to
3 their agreements.

4 47. Defendants had ample opportunities for collusion. Defendants routinely attended
5 trade shows and conferences during which they discussed Packaged Seafood pricing and other
6 aspects of their conspiracy. Defendants also collaborated on many projects during the Relevant
7 Period, including their joint “Tuna the Wonderfish” advertising campaign and the International
8 Seafood Sustainability Foundation.

9 48. The “Tuna the Wonderfish” advertising campaign, which ran from early 2011
10 through early 2012, was designed to stem the tide of declining sales of Packaged Seafood in the
11 United States. The “Tuna the Wonderfish” campaign gave Defendants ample opportunity to
12 conspire to raise and fix Packaged Seafood prices. Although the campaign was unsuccessful in
13 boosting consumption, Defendants nonetheless jointly implemented a price increase in 2012 in
14 the face of falling demand.

15 49. Defendants Bumble Bee and Tri-Union also co-operate on seafood processing and
16 packaging. Bumble Bee co-packs for the West Coast for Tri-Union in Bumble Bee’s Santa Fe
17 Springs, California plant, while Tri-Union returns the favor for the East Coast at its Lyons,
18 Georgia plant.

19 **THE CHARACTERISTICS OF THE UNITED STATES**
20 **PACKAGED SEAFOOD MARKET ARE CONDUCTIVE TO COLLUSION**

21 50. The structure and characteristics of the Packaged Seafood market in the United
22 States are conducive to a price-fixing agreement.

23 51. Packaged Seafood is a commodity product that is sold directly to retail chains and
24 through grocery wholesalers and distributors, such as Plaintiffs. Packaged Seafood varieties have
25 similar shelf life, contain similar amounts of seafood, and are marketed in cans, pouches, and
26 cups. Therefore, purchasers of Packaged Seafood are more likely to be influenced by price when
27 making a purchasing decision.

28

1 investigation into potential antitrust violations in the packaged seafood industry. The Company is
2 cooperating fully with the investigation.”

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

7 61. Upon information and belief, StarKist has been accepted into the DOJ corporate
8 leniency program.

9 **PLAINTIFFS SUFFERED ANTITRUST INJURY**

10 62. Defendants’ conspiracy had the following effects, among others:

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

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

15 63. During the Relevant Period, Defendants charged supra-competitive prices for
16 Packaged Seafood sold to Plaintiffs. By reason of Defendants’ alleged violations of the antitrust
17 laws, Plaintiffs have sustained injury to their businesses or property, having paid higher prices for
18 Packaged Seafood than they would have paid absent Defendants’ alleged illegal contract,
19 combination, or conspiracy, and, as a result, have suffered damages in an amount to be
20 determined. This is an antitrust injury of the type the antitrust laws were meant to punish and
21 prevent.

22 **FRAUDULENT CONCEALMENT AND**
23 **TOLLING OF THE STATUTE OF LIMITATIONS**

24 64. Throughout the Relevant Period, Defendants affirmatively and fraudulently
25 concealed their unlawful conduct from discovery by Plaintiffs.

26 65. Plaintiffs did not discover, and could not have discovered through the exercise of
27 reasonable diligence, which they, in fact, exercised, the existence of the conspiracy and
28 Defendants’ and their co-conspirators’ involvement in the conspiracy until July 23, 2015, when

1 the DOJ's investigations first became public.

2 66. Because the conspiracy was actively concealed until July 23, 2015, Plaintiffs were
3 unaware of Defendants' and their co-conspirators' unlawful conduct, and did not know that they
4 were paying artificially high prices for Packaged Seafood.

5 67. The affirmative acts of Defendants and their co-conspirators, including acts in
6 furtherance of the conspiracy, were wrongfully concealed and carried out in a manner that
7 precluded detection.

8 68. Defendants and their co-conspirators agreed among themselves not to discuss
9 publicly, or otherwise reveal, the nature and substance of the acts and communications in
10 furtherance of their illegal conspiracy.

11 69. Defendants and their co-conspirators met and communicated secretly concerning
12 the pricing and marketing of Packaged Seafood as to avoid detection.

13 70. Plaintiffs could not have discovered the alleged conspiracy at an earlier date by the
14 exercise of reasonable diligence because of the deceptive practices and secrecy techniques
15 employed by Defendants and their co-conspirators to avoid detection of, and fraudulently
16 conceal, their contract, conspiracy, or combination. Defendants' conspiracy was fraudulently
17 concealed by various means and methods, including, but not limited to, secret meetings,
18 misrepresentations to customers, and surreptitious communications among Defendants and their
19 co-conspirators via telephone or in in-person meetings in order to prevent the existence of written
20 records.

21 71. Because the alleged conspiracy was affirmatively concealed by Defendants and
22 their co-conspirators until July 23, 2015, Plaintiffs had no knowledge of the alleged conspiracy or
23 any facts or information that would have caused a reasonably diligent person to investigate
24 whether a conspiracy existed.

25 72. None of the facts or information available to Plaintiffs prior to July 23, 2015, if
26 investigated with reasonable diligence, could or would have led to the discovery of the conspiracy
27 prior to July 23, 2015.

28

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court:

A. Adjudge and decree that Defendants’ unlawful contract, combination, or conspiracy constitutes a per se violation of Section 1 of the Sherman Act;

B. Adjudge and decree that each Defendant, and its successors, assigns, parents, subsidiaries, affiliates, and transferees, and their respective officers, directors, agents, and employees, and all other persons acting or claiming to act on behalf of any of them or in concert with them, be permanently enjoined and restrained from in any manner, directly or indirectly, continuing, maintaining, or renewing the combination, conspiracy, agreement, understanding, or concert of action, or adopting any practice, plan, program, or design having a similar purpose or effect in restraining competition in the United States Packaged Seafood market;

C. Enter judgment against Defendants, jointly and severally, in favor of Plaintiffs for treble damages determined to have been sustained by Plaintiffs by virtue of Defendants’ and their co-conspirators’ violations of the Sherman Act;

D. Award Plaintiffs their attorneys’ fees, litigation expenses, and court costs, as well as pre-judgment and post-judgment interest as permitted by United States law; and

E. Grant Plaintiffs such other and further relief as the case may require, or as the Court deems just and proper under the circumstances.

JURY DEMAND

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

Dated: September 14, 2015

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