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and MEADOWBROOK MEAT COMPANY, INC.

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9 **UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

10 McLANE COMPANY, INC. and
11 MEADOWBROOK MEAT COMPANY,
INC.

CASE NO. 15-cv-05310

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

12
13 Plaintiffs,

14 v.

15 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

18 Defendants.
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1 Plaintiffs McLane Company, Inc. and Meadowbrook Meat Company, Inc. (“Plaintiffs”),
2 by and through undersigned counsel, complain as follows:

3 **NATURE OF THE CASE**

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

11 2. Plaintiffs bring this action to (i) recover treble damages, attorneys’ fees,
12 litigation expenses, and court costs, and (ii) secure injunctive relief for violations of Section 1 of
13 the 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
16 Seafood industry had slowed, and the prospects for growth were dim. Beginning at least as early
17 as January 2000, in an effort to combat the prospect of diminishing profits, Defendants and their
18 co-conspirators conspired to raise, fix, stabilize, or maintain prices, allocate customers, and
19 restrict capacity in the market for Packaged Seafood sold in the United States. As a direct and
20 proximate result of Defendants’ cartel activities, Plaintiffs were overcharged by Defendants for
21 Packaged 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
27 outside the United States that caused direct, substantial, and reasonably foreseeable and intended
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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
4 Clayton Act, 15 U.S.C. §§ 15(a) and 22, and 28 U.S.C. §§ 1391 (b), (c), and (d), because a
5 substantial part of the events giving rise to Plaintiffs' claims occurred in this district, a substantial
6 portion of the affected interstate trade and commerce discussed below has been carried out in this
7 district, and one or more Defendants reside, are found, have agents, are licensed to do business,
8 are doing business, or transact business in this district.

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

17 **PARTIES**

18 **A. Plaintiff**

19 8. Plaintiff McLane Company, Inc. ("McLane") is a Texas corporation with
20 its principal place of business in Temple, Texas. During the Relevant Period, McLane purchased
21 Packaged Seafood directly from one or more Defendants, and has been injured in its business or
22 property by reason of the antitrust violations alleged in this complaint.

23 9. Plaintiff Meadowbrook Meat Company, Inc. ("Meadowbrook") is a North
24 Carolina corporation with its principal place of business in Rocky Mount, North Carolina. During
25 the Relevant Period, Meadowbrook purchased Packaged Seafood directly from one or more
26 Defendants, and has been injured in its business or property by reason of the antitrust violations
27 alleged in this complaint.

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FACTUAL ALLEGATIONS

A. Background

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

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

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

29. Each package is affixed with a permanent production code identifying plant, product, date packed, batch, and other information. Filled and sealed packages are then cooked under pressure to make the products commercially sterile.

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

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

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

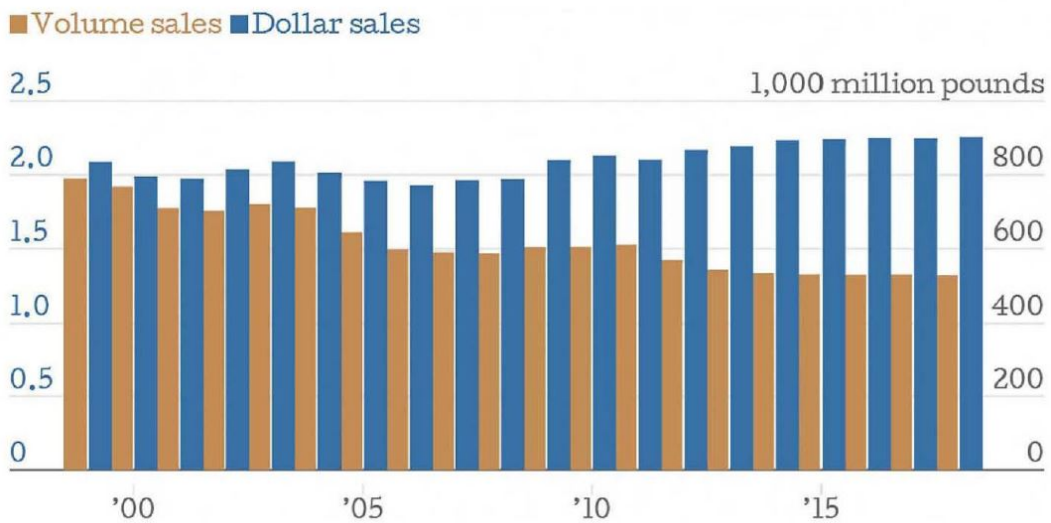
33. After decades of growth, demand for Packaged Seafood has been declining since 2000. From about 1950 until 2000, packaged tuna was the most popular seafood in the

1 United States. In 1990, the International Trade Commission estimated that Americans consumed
 2 between one-half and two-thirds of the global supply of packaged tuna.

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

6 35. As a result, domestic consumption of Packaged Seafood has experienced a
 7 steady decline since 2000 (*see* Figure 1 below). Yet, the prices of Packaged Seafood increased
 8 steadily from 2000 to 2015.

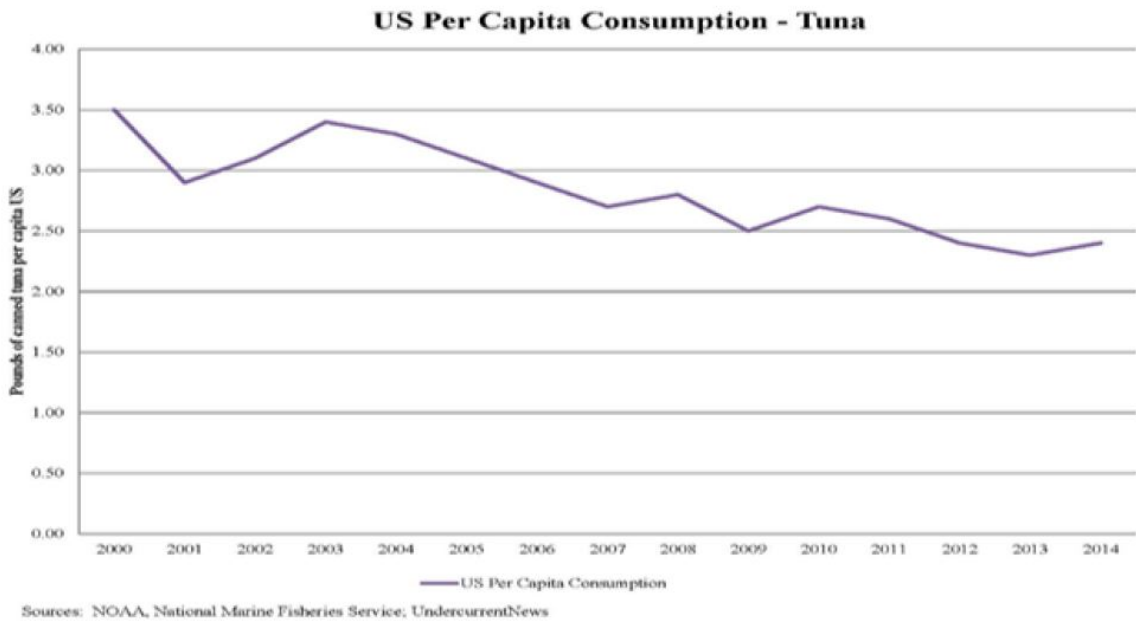
9 **Figure 1**



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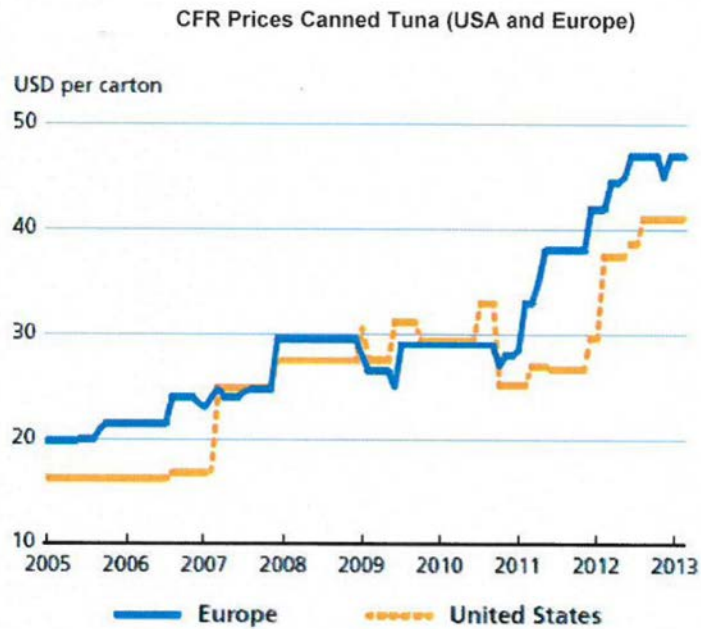
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Figure 2



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

Figure 3



38. In a competitive environment, a decline in demand for a product will normally lead to a decline in the price of that product. However, because Defendants controlled

1 the market and agreed with each other to restrict capacity, allocate customers, and fix the prices
2 of Packaged Seafood, the prices of Packaged Seafood were intentionally and collaboratively set at
3 artificially high levels throughout the Relevant Period.

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

8 **B. Defendants' Anticompetitive Conspiracy**

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

16 41. Senior executives of the three companies met at least twice a year.

17 42. At other times, top executives regularly discussed prices and shared
18 sensitive customer information.

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

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

26 45. Defendants agreed to exchange, and did exchange, information during their
27 telephone conversations and meetings for the purpose of monitoring and enforcing adherence to
28 their agreements.

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

6 47. The “Tuna the Wonderfish” advertising campaign, which ran from early
7 2011 through early 2012, was designed to stem the tide of declining sales of Packaged Seafood in
8 the United States. The “Tuna the Wonderfish” campaign gave Defendants ample opportunity to
9 conspire to raise and fix Packaged Seafood prices. Although the campaign was unsuccessful in
10 boosting consumption, Defendants nonetheless jointly implemented a price increase in 2012 in
11 the face of falling demand.

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

16 **THE CHARACTERISTICS OF THE UNITED STATES**
17 **PACKAGED SEAFOOD MARKET ARE CONDUCTIVE TO COLLUSION**

18 49. The structure and characteristics of the Packaged Seafood market in the
19 United States are conducive to a price-fixing agreement.

20 50. Packaged Seafood is a commodity product that is sold directly to retail
21 chains and through grocery wholesalers and distributors, such as Plaintiffs. Packaged Seafood
22 varieties contain similar amounts of seafood and are marketed in packages, including, but not
23 limited to, cans, pouches, and cups. Therefore, purchasers of Packaged Seafood are more likely to
24 be influenced by price when making a purchasing decision.

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

1 60. Upon information and belief, one of the Defendants applied for admittance
2 into the DOJ's corporate leniency program to report Defendants' price fixing activity and other
3 anticompetitive conduct violative of the Sherman Act § 1 in the United States Packaged Seafood
4 market.

5 61. Upon information and belief, one of the Defendants has been accepted into
6 the DOJ corporate leniency program.

7 **PLAINTIFFS SUFFERED ANTITRUST INJURY**

8 62. Defendants' conspiracy had the following effects, among others:

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

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

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

20 **FRAUDULENT CONCEALMENT AND**
21 **TOLLING OF THE STATUTE OF LIMITATIONS**

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

24 65. Plaintiffs did not discover, and could not have discovered through the
25 exercise of reasonable diligence, which they, in fact, exercised, the existence of the conspiracy
26 and Defendants' and their co-conspirators' involvement in the conspiracy until July 23, 2015,
27 when the DOJ's investigations first became public.
28

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

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

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

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

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

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

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

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1 73. As a result of Defendants' and their co-conspirators' fraudulent
2 concealment of the conspiracy, the running of any statute of limitations has been tolled with
3 respect to Plaintiffs' claims of anticompetitive conduct alleged in this Complaint.

4 **COUNT I**

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

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

9 75. Defendants' anticompetitive acts were intentionally directed at the United
10 States Packaged Seafood market, and had a substantial and foreseeable effect on interstate
11 commerce by raising and fixing Packaged Seafood prices throughout the United States.

12 76. The contract, combination, or conspiracy had the following direct,
13 substantial, and reasonably foreseeable effects upon commerce in the United States and upon
14 import commerce:

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

17 b. Plaintiffs have been deprived of the benefits of free, open, and unrestricted
18 competition in the United States Packaged Seafood market; and

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

21 77. Defendants' and their co-conspirators' anticompetitive activities have
22 directly and proximately caused injury to Plaintiffs in the United States.

23 78. As a direct and proximate result of Defendants' unlawful conduct,
24 Plaintiffs paid artificially inflated prices for Packaged Seafood.

25 79. As a direct and proximate result of Defendants' unlawful conduct,
26 Plaintiffs have been damaged in their business or property by paying prices for Packaged Seafood
27 that were higher than they would have been but for Defendants' unlawful conduct, which has
28 resulted in an amount of ascertainable damages to be established at trial.

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: November 19, 2015

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