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 8

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

11 WESTERN FAMILY FOODS, INC.

CASE NO. 3:15-cv-04312

12 Plaintiff,

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

13 v.

14 TRI-UNION SEAFOODS, LLC, d/b/a
 15 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 Plaintiff Western Family 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 bring 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
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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 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 Plaintiff's 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. Plaintiff**

19 8. Plaintiff Western Family Foods, Inc. is an Oregon corporation with its principal
20 place of business in Tigard Oregon. During the Relevant Period, Plaintiff purchased Packaged
21 Seafood directly from one or more Defendants, and has been injured in its business or property by
22 reason of the antitrust violations alleged in this complaint.

23 **B. Defendants**

24 9. 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 10. 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 11. 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 12. 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 13. 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 14. 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 15. 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 16. 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 17. 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 18. Defendants Tri-Union, Bumble Bee, and StarKist are the leading manufacturers of
28 Packaged Seafood sold in the United States.

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

3 20. 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 21. 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 22. 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 23. 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 24. 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 25. 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 26. 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 27. 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 28. 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 29. 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 30. 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 31. 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%.

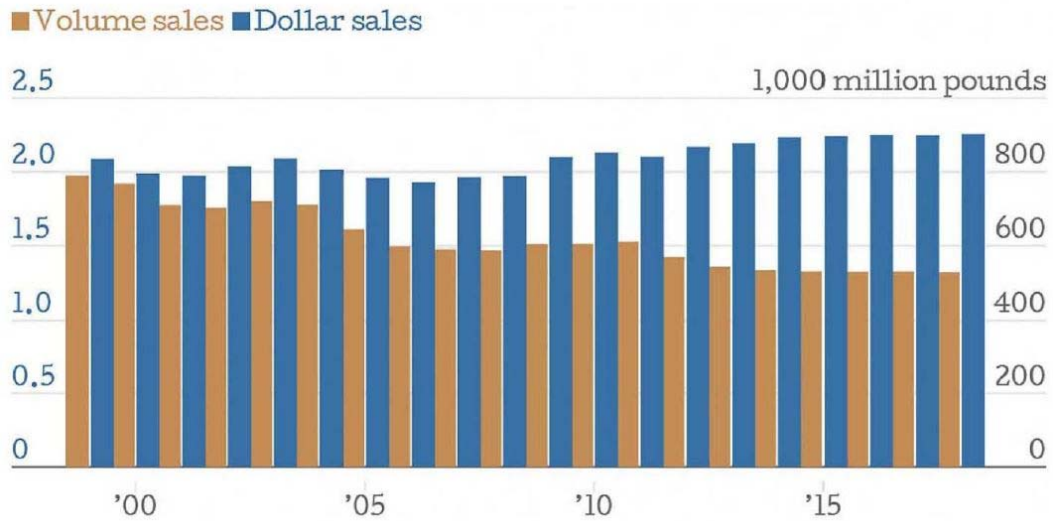
20 32. After decades of growth, demand for Packaged Seafood has been declining since
21 2000. From about 1950 until 2000, packaged tuna was the most popular seafood in the United
22 States. In 1990, the International Trade Commission estimated that Americans consumed between
23 one-half and two-thirds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

24 33. 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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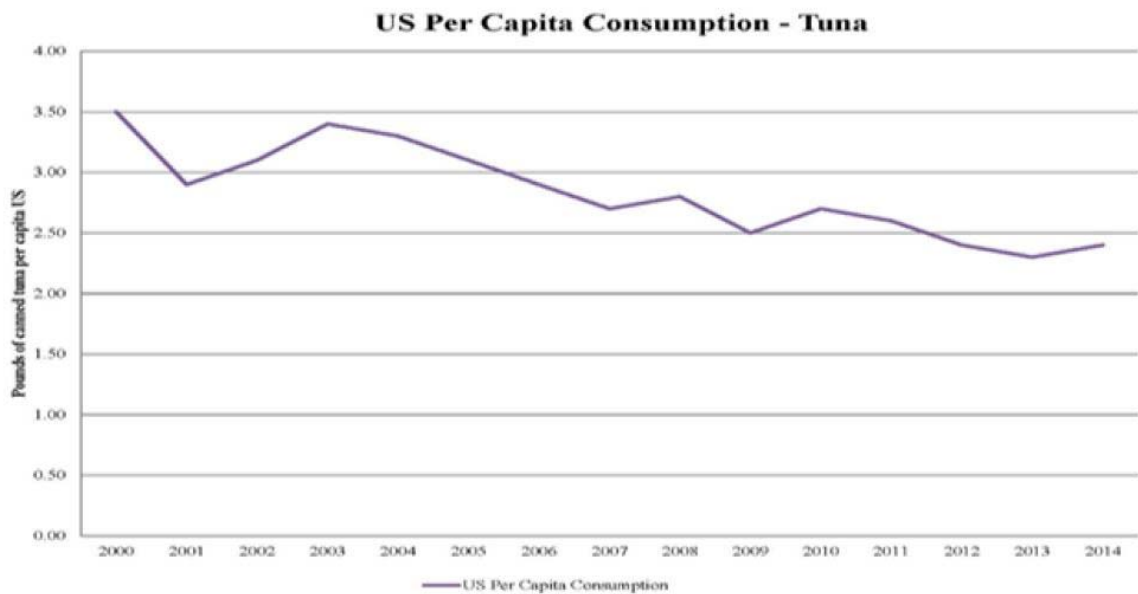
1 34. As a result, domestic consumption of Packaged Seafood has experienced a steady
 2 decline since 2000 (*see* Figure 1 below). Yet, the prices of Packaged Seafood increased steadily
 3 from 2000 to 2015.

4 **Figure 1**



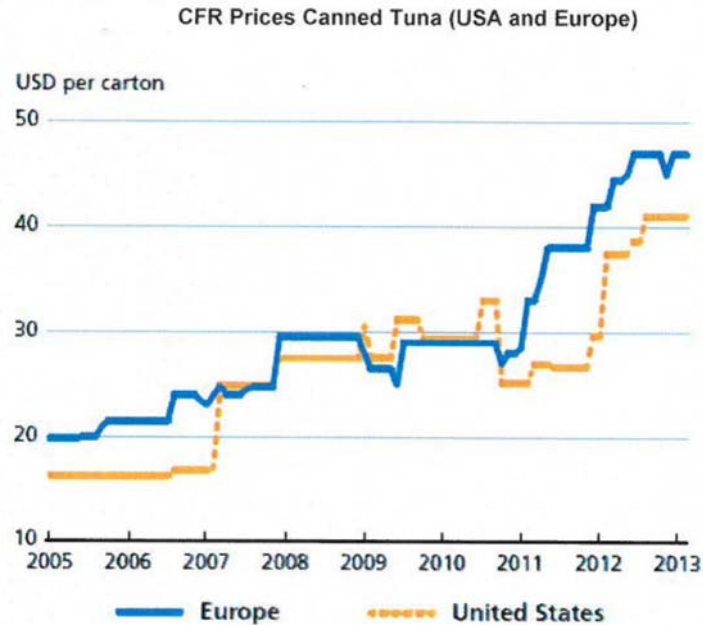
14 35. In particular, packaged tuna saw a steady decline in U.S. per capita consumption
 15 from 3.5 to 2.4 pounds per person per annum between 2000 and 2014 (*see* Figure 2 below).

17 **Figure 2**



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

3 **Figure 3**



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

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

24 **B. Defendants' Anticompetitive Conspiracy**

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

1 meetings and telephone calls, Defendants shared sensitive business information, and entered into
2 agreements to fix, raise, stabilize, and maintain prices of Packaged Seafood sold to customers in
3 the United States.

4 40. Senior executives of the three companies met at least twice a year.

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

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

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

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

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

22 46. The “Tuna the Wonderfish” advertising campaign, which ran from early 2011
23 through early 2012, was designed to stem the tide of declining sales of Packaged Seafood in the
24 United States. The “Tuna the Wonderfish” campaign gave Defendants ample opportunity to
25 conspire to raise and fix Packaged Seafood prices. Although the campaign was unsuccessful in
26 boosting consumption, Defendants nonetheless jointly implemented a price increase in 2012 in
27 the face of falling demand.
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1 47. Defendants Bumble Bee and Tri-Union also co-operate on seafood processing and
2 packaging. Bumble Bee co-packs for the West Coast for Tri-Union in Bumble Bee’s Santa Fe
3 Springs, California plant, while Tri-Union returns the favor for the East Coast at its Lyons,
4 Georgia plant.

5 **THE CHARACTERISTICS OF THE UNITED STATES**
6 **PACKAGED SEAFOOD MARKET ARE CONDUCTIVE TO COLLUSION**

7 48. The structure and characteristics of the Packaged Seafood market in the United
8 States are conducive to a price-fixing agreement.

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

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

18 51. Purchasers routinely source their Packaged Seafood from one of the three
19 Defendants. As a result, Defendants dominate the United States Packaged Seafood market.

20 52. Defendants possessed significant market power to raise prices for Packaged
21 Seafood above competitive levels in the United States.

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

25 **THE DOJ INVESTIGATION**

26 54. The San Francisco office of the antitrust division of the United States Department
27 of Justice (“DOJ”) is conducting an investigation into anticompetitive practices in the United
28 States Packaged Seafood industry. The DOJ has convened a grand jury. Two of the three largest

1 United States Packaged Seafood manufacturers, Tri-Union and Bumble Bee, have publicly
2 confirmed receipt of grand jury subpoenas.

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

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

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

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

19 59. Upon information and belief, StarKist has been accepted into the DOJ corporate
20 leniency program.

21 **PLAINTIFF SUFFERED ANTITRUST INJURY**

22 60. Defendants’ conspiracy had the following effects, among others:

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

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

27 61. During the Relevant Period, Defendants charged supra-competitive prices for
28 Packaged Seafood sold to Plaintiff. By reason of Defendants’ alleged violations of the antitrust

1 laws, Plaintiff has sustained injury to their businesses or property, having paid higher prices for
2 Packaged Seafood than they would have paid absent Defendants' alleged illegal contract,
3 combination, or conspiracy, and, as a result, have suffered damages in an amount to be
4 determined. This is an antitrust injury of the type the antitrust laws were meant to punish and
5 prevent.

6 **FRAUDULENT CONCEALMENT AND**
7 **TOLLING OF THE STATUTE OF LIMITATIONS**

8 62. Throughout the Relevant Period, Defendants affirmatively and fraudulently
9 concealed their unlawful conduct from discovery by Plaintiff.

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

14 64. Because the conspiracy was actively concealed until July 23, 2015, Plaintiff was
15 unaware of Defendants' and their co-conspirators' unlawful conduct, and did not know that they
16 were paying artificially high prices for Packaged Seafood.

17 65. The affirmative acts of Defendants and their co-conspirators, including acts in
18 furtherance of the conspiracy, were wrongfully concealed and carried out in a manner that
19 precluded detection.

20 66. Defendants and their co-conspirators agreed among themselves not to discuss
21 publicly, or otherwise reveal, the nature and substance of the acts and communications in
22 furtherance of their illegal conspiracy.

23 67. Defendants and their co-conspirators met and communicated secretly concerning
24 the pricing and marketing of Packaged Seafood as to avoid detection.

25 68. Plaintiff could not have discovered the alleged conspiracy at an earlier date by the
26 exercise of reasonable diligence because of the deceptive practices and secrecy techniques
27 employed by Defendants and their co-conspirators to avoid detection of, and fraudulently
28 conceal, their contract, conspiracy, or combination. Defendants' conspiracy was fraudulently

1 concealed by various means and methods, including, but not limited to, secret meetings,
2 misrepresentations to customers, and surreptitious communications among Defendants and their
3 co-conspirators via telephone or in in-person meetings in order to prevent the existence of written
4 records.

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

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

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

15 **COUNT I**

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

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

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

23 74. The contract, combination, or conspiracy had the following direct, substantial, and
24 reasonably foreseeable effects upon commerce in the United States and upon import commerce:

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

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

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

3 75. Defendants' and their co-conspirators' anticompetitive activities have directly and
4 proximately caused injury to Plaintiff in the United States.

5 76. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff paid
6 artificially inflated prices for Packaged Seafood.

7 77. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
8 been damaged in its business or property by paying prices for Packaged Seafood that were higher
9 than they would have been but for Defendants' unlawful conduct, which has resulted in an
10 amount of ascertainable damages to be established at trial.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff prays that the Court:

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

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

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

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

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

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JURY DEMAND

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

Dated: September 21, 2015

KAPLAN FOX & KILSHEIMER LLP

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