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11 **UNITED STATES DISTRICT COURT**  
 12 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

14 THOMAS E. WILLOUGHBY III, on  
 15 behalf of himself and all others similarly  
 16 situated,

17 Plaintiff,

18 v.

19 BUMBLE BEE FOODS LLC,  
 20 STARKIST COMPANY, TRI-UNION  
 SEAFOODS LLC, and KING OSCAR,  
 INC.,

21 Defendants.

Case No. '15CV2160 AJB RBB

**CLASS ACTION COMPLAINT  
FOR DAMAGES AND  
INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

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1 Plaintiff Thomas E. Willoughby III (“Plaintiff”), for his complaint, alleges  
2 upon personal knowledge as to himself and his own actions, and upon information  
3 and belief, including the investigation of counsel, as follows:

4 **NATURE OF ACTION**

5 1. This is an antitrust class action brought against Defendants Bumble  
6 Bee Foods LLC, StarKist Company, Tri-Union Seafoods LLC, and King Oscar,  
7 Inc. (collectively “Defendants”) pursuant to Sections 1 and 2 of the Sherman Act,  
8 15 U.S.C. §§ 1, 2, and Section 3 of the Clayton Act, 15 U.S.C. § 14, and state  
9 antitrust and unfair competition laws. This action is brought by Plaintiff, on behalf  
10 of himself and of Classes of persons and entities who indirectly purchased from  
11 any Defendant or current or former subsidiary or affiliate, shelf-stable packaged  
12 seafood products (“PSPs”), including tuna, crab, mackerel, oyster, salmon, sardines  
13 and shrimp, during the period from and including at least January 1, 2000 through  
14 such time as the anticompetitive effects of Defendants’ conduct ceases (the “Class  
15 Period”).

16 2. Defendants have conspired to raise, fix, stabilize or maintain prices as  
17 well as allocate customers, and restrict capacity within the market for the sale of  
18 PSPs during the Class Period.

19 3. With slowing and stagnating growth in the PSP industry, beginning  
20 around 2000, Defendants directly coordinated the pricing and market allocation  
21 for PSPs throughout the United States. As part of this, Defendants increased  
22 prices for PSPs to record highs in spite of reduced consumer interest and falling  
23 demand. That conduct continues to this day.

24 **PARTIES**

25 **Plaintiff**

26 4. Plaintiff Thomas E. Willoughby III is domiciled in Cumberland  
27 County, Maine and purchased PSPs, primarily canned tuna, indirectly from one or  
28 more Defendants in the States of Maine and California during the Class Period.

1 **Defendants**

2 5. Defendant Tri-Union Seafoods, LLC d/b/a Chicken of the Sea  
3 International (“COTS”) is a Delaware corporation with its principal place of  
4 business at 4510 Executive Drive, No. 3, San Diego, CA 92121.

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

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

11 8. Defendant Bumble Bee Foods LLC, f/k/a Bumble Bee Seafoods LLC  
12 (“Bumble Bee”) is a Delaware corporation with its principal place of business at  
13 9655 Granite Ridge Drive, Suite 100, San Diego, CA 92123. Bumble Bee is a  
14 wholly-owned subsidiary of Lion Capital, a private investment firm headquartered  
15 in the United Kingdom.

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

20 10. Defendants and their co-conspirators directly and through their  
21 affiliates sold PSPs in the United States and in this district at artificially inflated  
22 prices during the Class Period. Defendants are direct, horizontal competitors in the  
23 United States PSP market.

24 **AGENTS AND CO-CONSPIRATORS**

25 11. On information and belief, other corporations, partnerships, or business  
26 entities, currently unknown to Plaintiff, are co-conspirators with Defendants in  
27 their unlawful restraints of trade. Various persons that are not named as  
28 Defendants have participated as co-conspirators in the violations alleged herein

1 and have performed acts and made statements in furtherance thereof.

2 12. These other persons or entities have facilitated, adhered to,  
3 participated in, and/or communicated with others regarding the alleged  
4 conspiracy to raise prices of PSPs and the anticompetitive and unduly restrictive  
5 exclusive dealing agreements addressed in this lawsuit. Plaintiff reserves the right  
6 to name some or all of these entities as Defendants at a later date.

7 **JURISDICTION AND VENUE**

8 13. This Court has federal question jurisdiction pursuant to the Sherman  
9 Act, 15 U.S.C. §§ 1-7, the Clayton Act, 15 U.S.C. §§ 15, 26; 28 U.S.C. §§ 1331,  
10 1337; and it has supplemental jurisdiction over the state law claims pursuant to 28  
11 U.S.C. § 1367.

12 14. This Court also has jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)  
13 (“The Class Action Fairness Act”) because sufficient diversity of citizenship exists  
14 between parties in this action, the aggregate amount in controversy exceeds  
15 \$5,000,000, and there are 100 or more members of each of the Classes.

16 15. Venue is proper in this district pursuant to Section 12 of the Clayton  
17 Act, 15 U.S.C. § 22, and 28 U.S.C. §§ 1391 (b)-(d), because a substantial part of  
18 the events giving rise to Plaintiff’s claims occurred in this District, a substantial  
19 portion of the affected interstate trade and commerce discussed below has been  
20 carried out in this District, and one or more of the Defendants are licensed to do  
21 business in, are doing business in, had agents in, or are found or transact business  
22 in California and this District.

23 16. This Court has *in personam* jurisdiction over the Defendants because  
24 each, either directly or through the ownership and/or control of its subsidiaries,  
25 *inter alia*: transacted business in the United States, including in this District;  
26 directly or indirectly sold or marketed PSPs throughout California, including in  
27 this District; had substantial aggregate contacts with the United States as a whole,  
28 including in this District; or were engaged in anticompetitive conduct that was

1 directed at, and had a direct, substantial, reasonably foreseeable and intended effect  
2 of causing injury to, the business or property of persons and entities residing in,  
3 located in, or doing business throughout California, including in this District.  
4 Defendants also have purposefully availed themselves of the laws of the United  
5 States.

6 17. Defendants' unlawful conduct described herein adversely affected  
7 persons and entities in California who purchased PSPs, including Plaintiff and the  
8 Classes.

9 **CLASS ACTION ALLEGATIONS**

10 18. Plaintiff brings this action on behalf of himself and as a class action  
11 under Federal Rules of Civil Procedure 23(a), (b)(2) and (b)(3), seeking damages,  
12 equitable and injunctive relief on behalf of the following classes:

- 13 a. All persons and entities who resided in the United States who  
14 indirectly purchased, from any Defendants or any current or  
15 former subsidiary or affiliate thereof, or any co-conspirator,  
16 PSPs during the Class Period for the purposes of injunctive  
17 relief under The Sherman Act (the "Sherman Act Nationwide  
18 Class");
- 19 b. All persons and entities who resided in the State of California  
20 who indirectly purchased, from any Defendant or any current or  
21 former subsidiary or affiliate thereof, or any co-conspirator,  
22 PSPs during the Class Period (the "California Class"); and
- 23 c. All persons and entities who resided in the State of Maine who  
24 indirectly purchased, from any Defendant or any current or  
25 former subsidiary or affiliate thereof, or any co-conspirator,  
26 PSPs during the Class Period (the "Maine Class");

27 19. The Sherman Act Nationwide Class, the California Class, and the  
28 Maine Class are collectively referred to herein as the "Classes."

1           20. Excluded from the Classes are Defendants, their parent companies,  
2 subsidiaries and affiliates, any co-conspirators, federal governmental entities and  
3 instrumentalities of the federal government, states and their subdivisions, agencies  
4 and instrumentalities, and persons who purchased PSPs directly.

5           21. The Classes are so numerous that joinder of all members is  
6 impracticable. While Plaintiff does not know the exact number of the members of  
7 the Classes, Plaintiff believes there are (at least) thousands of members in each of  
8 the Classes.

9           22. Common questions of law and fact exist as to all members of the  
10 Classes. This is particularly true given the nature of Defendants' conspiracy, which  
11 was generally applicable to all members of each of the Classes, thereby making  
12 appropriate relief with respect to each Class as a whole. Such questions of law and  
13 fact common to the Classes include, but are not limited to:

14           (a) Whether the Defendants and their co-conspirators engaged in a  
15 combination and conspiracy to fix, raise, maintain or stabilize the  
16 prices of PSPs sold in the United States;

17           (b) The identity of the participants of the alleged conspiracy;

18           (c) The duration of the alleged conspiracy and the acts carried out  
19 by Defendants and their co-conspirators in furtherance of the  
20 conspiracy;

21           (d) Whether Defendants' alleged conduct violated the Sherman and  
22 Clayton Acts;

23           (e) Whether Defendants' alleged conduct violated California and  
24 Maine state law;

25           (f) Whether the conduct of Defendants and their co-conspirators,  
26 as alleged in this Complaint, caused injury to the business or property  
27 of Plaintiff and the members of the Classes;

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- 1 (g) The effect of Defendants' alleged conduct on the prices of PSPs
- 2 sold in the United States during the Class Period; and
- 3 (h) The appropriate relief for the Classes, including injunctive and
- 4 equitable relief.

5 23. Plaintiff's claims are typical of the claims of the members of the  
6 Classes, and Plaintiff will fairly and adequately protect the interests of the Classes.  
7 Plaintiff and all members of the Classes are similarly affected by Defendants'  
8 wrongful conduct in that they paid artificially inflated prices for PSPs purchased  
9 indirectly from the Defendants and/or their co-conspirators.

10 24. Plaintiff's claims arise out of the same common course of conduct  
11 giving rise to the claims of the other members of the Classes. Plaintiff's interests  
12 are coincident with, and not antagonistic to, those of the other members of the  
13 Classes. Plaintiff is represented by counsel who are competent and experienced in  
14 the prosecution of antitrust and class action litigation.

15 25. The questions of law and fact common to the members of the Classes  
16 predominate over any questions affecting only individual members, including legal  
17 and factual issues relating to liability and damages.

18 26. Class action treatment is a superior method for the fair and efficient  
19 adjudication of the controversy, in that, among other things, such treatment will  
20 permit a large number of similarly situated persons to prosecute their common  
21 claims in a single forum simultaneously, efficiently and without the unnecessary  
22 duplication of evidence, effort and expense that numerous individual actions would  
23 engender. The benefits of proceeding through the class mechanism, including  
24 providing injured persons or entities with a method for obtaining redress for claims  
25 that it might not be practicable to pursue individually, substantially outweigh any  
26 difficulties that may arise in management of this class action.

27 27. The prosecution of separate actions by individual members of the  
28 Classes would create a risk of inconsistent or varying adjudications, establishing

1 incompatible standards of conduct for Defendants.

2  
3 **RELEVANT MARKETS**

4 28. The relevant geographic market is the United States. To compete  
5 effectively within the United States, Defendants and other producers of PSPs need  
6 distribution assets and relationships within the United States. PSP manufacturers  
7 and sellers located outside of the United States that lack such assets and  
8 relationships are unable to constrain the prices of PSPs and sellers that have  
9 such domestic assets and relationships.

10 **INTERSTATE COMMERCE**

11 29. Defendants manufactured and/or sold PSPs in the United States in a  
12 continuous and uninterrupted flow of interstate commerce, including through and  
13 into this judicial district.

14 30. Defendants' business activities substantially affected interstate  
15 commerce in the United States and caused antitrust injury throughout the United  
16 States.

17 31. Together, Defendants have a market share of roughly 85% of the  
18 United States PSP industry. StarKist controls roughly 35-40% of the market,  
19 Bumble Bee roughly 25% and Tri-Union roughly 20%.

20 **ADDITIONAL FACTUAL ALLEGATIONS**

21 **A. Background**

22 32. PSPs start as raw seafood that is processed, cooked and canned for  
23 flavor, safety and to increase shelf life. Because the animals that comprise PSPs are  
24 generally caught far out to sea, raw seafood is usually delivered to canneries or  
25 processing facilities in a frozen or refrigerated state.

26 33. Seafood of acceptable quality is transferred to large ovens for "pre-  
27 cooking." Following pre-cooking and cleaning, seafood is fed to a filling machine  
28 which transfers the seafood to cans, pouches or cups in pre-set amounts. The  
containers are then closed and sealed in sealing machines.



1           34. Each package has a code that identifies the plant, product, date, batch  
2 and other identifying information. Filled and sealed packages are then cooked  
3 under pressure to make the products commercially sterile and so that they will have  
4 a long shelf-life.

5           35. Defendants all sell PSPs in the United States. StarKist, Bumble Bee  
6 and Tri-Union sell packaged tuna, clams, salmon, and sardines. King Oscar sells  
7 sardines, tuna, cod and salmon. Bumble Bee and Tri-Union also sell packaged  
8 crab, mackerel, oysters and shrimp.

9           36. The PSP industry generates yearly sales of approximately \$2.6 billion.  
10 Tuna, the largest category of PSP by far, accounts for approximately \$1.7 billion of  
11 this.

12           37. Defendants collectively dominate the United States industry for PSPs  
13 and have done so for decades. However, since 2000, demand for PSPs has been  
14 declining for numerous reasons.

15           38. However, while consumption has declined, prices have increased. For  
16 example, average per person tuna consumption decreased from 3.5 to 2.4 pounds  
17 per person per year from 2000 to 2014, while the average price per carton of  
18 canned tuna has increased from just over \$15 to roughly \$40 in the same period.

19           39. In a competitive environment, a decline in demand for a given product  
20 normally leads to a decline in that product's price. However, as Defendants  
21 control the market and have agreed to restrict capacity, allocate customers, and fix  
22 prices for PSPs, the prices were set at artificially high levels.

23           40. Prices for PSPs since at least 2000 were a direct result of Defendants'  
24 conspiracy to restrict capacity, allocate customers, and fix the prices of PSPs in the  
25 United States. As a result, Plaintiff and the Classes paid artificially-inflated prices  
26 for PSPs purchased indirectly from Defendants.

27           **B. Defendants Engaged in an Anticompetitive Conspiracy**

28           41. At least as early as January 2000 – and continuing to the present –

1 Defendants Tri-Union, Bumble Bee and StarKist participated in anticompetitive  
2 communications, including telephone calls (some multiple times per day) and  
3 frequent face-to-face meetings at pre-arranged locations. At these meetings,  
4 Defendants shared sensitive business information and entered into agreements to  
5 fix, raise, stabilize, and/or maintain the prices of PSPs sold to customers in the  
6 United States.

7 42. As part of this, senior executives of Defendants met at least twice a  
8 year.

9 43. At other times, senior executives of Defendants regularly discussed  
10 prices and shared sensitive customer information.

11 44. Throughout the Class Period, Defendants communicated regularly  
12 by telephone to discuss prices and sensitive customer information. For example,  
13 during at least one telephone conversation between Bumble Bee and StarKist  
14 executives, StarKist informed Bumble Bee that StarKist and Tri-Union were in  
15 agreement to raise prices.

16 45. As part of the conspiracy, Defendants discussed pricing and agreed  
17 to coordinate the timing and level of price increases for PSPs sold to customers  
18 in the United States. Defendants also agreed to allocate customers and restrict  
19 output capacity.

20 46. Defendants had ample opportunities for collusion. Defendants  
21 routinely attended trade shows and conferences, at which they discussed PSP  
22 pricing and other anticompetitive practices.

23 47. Defendants also collaborated on projects at trade and other not-for-  
24 profit associations during the relevant period, such as the “Tuna the Wonderfish”  
25 campaign and the International Seafood Sustainability Foundation.

26 48. For example, the “Tuna the Wonderfish” campaign was designed to  
27 combat declining sales of PSPs from early 2011 to early 2012. It was  
28 unsuccessful, but it gave Defendants ample opportunity to collude to raise and

1 fix PSP prices. This was evidenced in a 2012 price increase in the face of falling  
2 demand.

3 49. Defendants Bumble Bee and Tri-Union also cooperate on seafood  
4 processing and packaging. Bumble Bee co-packs for the West Coast of the  
5 United States for Tri-Union in Bumble Bee's Santa Fe Springs, California plant  
6 while Tri-Union does the same for the East Coast in Lyons, Georgia.

7 **C. The PSP Market Is Conducive to Collusion**

8 50. The PSP market is structured and characterized in such a way as to be  
9 highly conducive to conspiracy.

10 51. PSPs are commodity products which are sold to wholesale and retail  
11 stores (and, in a very few cases, directly to consumers) which in turn sell to  
12 customers such as the Plaintiff. There are different varieties of PSPs, but within  
13 each type of seafood, each variety is sold in similar amounts in similar sizes with  
14 similar shelf life and in similar types of packaging. As a result, consumers such as  
15 Plaintiff are more likely to be influenced by price when making a purchasing  
16 decision.

17 52. There are numerous barriers to entry into the PSP market. Start-up  
18 costs are very high, and access to manufacturing materials, distribution channels  
19 and raw materials are all highly restricted. Defendants are able to raise prices  
20 without fear of being undercut by new entrants into the market.

21 53. As stated above, Defendants have roughly 80% of the market share  
22 for the United States, so almost all wholesale or retail purchasers do business with  
23 Defendants.

24 54. There are no economically reasonable substitutes for PSPs. Potential  
25 substitutes, such as fresh or frozen seafood, are generally sold raw and do not have  
26 similar shelf-lives and require preparation before consumption.

27 **D. The Department of Justice Investigates Defendants**

28 55. The San Francisco office of the Antitrust Division of the United States

1 Department of Justice is currently investigating anticompetitive practices in the PSP  
2 industry. A grand jury has been convened. Two Defendants, Tri-Union and Bumble  
3 Bee, have publicly confirmed receipt of grand jury subpoenas.

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

8 57. On July 17, 2015, Thai Union announced it suspended a planned public  
9 stock offering. Thai Union stated that it wanted ‘additional clarity’ on the investigation  
10 before proceeding with the offering. Thai Union has notified the Securities and  
11 Exchange Commission of the suspension.

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

17 59. StarKist has not announced whether or not it has received a grand jury  
18 subpoena. However, upon information and belief, StarKist has applied for and been  
19 accepted into the DOJ’s corporate leniency program. This admittance is specifically  
20 related to Defendants’ price-fixing activities and other anticompetitive conduct in  
21 violation of Section 1 of The Sherman Act in the United States PSP market.

22 **PLAINTIFF AND THE CLASSES SUFFERED ANTITRUST INJURY**

23 60. Defendants’ anticompetitive conduct had the following effects, among  
24 others:

- 25 a. Price competition has been restrained or eliminated with respect  
26 to PSPs sold in the United States;
- 27 b. The prices of PSPs sold in the United States have been fixed,  
28 raised, maintained, or stabilized at artificially inflated levels;

1 c. Indirect purchasers of PSPs have been deprived of free and  
2 open competition; and

3 d. Indirect purchasers of PSPs paid artificially inflated prices.

4 61. By reason of the alleged violations of the antitrust laws and other laws  
5 alleged herein, Plaintiff and the members of the Classes have sustained injury to  
6 their businesses or property, having paid higher prices for PSPs than they would  
7 have paid in the absence of Defendants' illegal conduct, and, as a result, have  
8 suffered damages in an amount presently undetermined. This is an antitrust injury  
9 of the type that the antitrust laws were meant to punish and prevent.

10 **FRAUDULENT CONCEALMENT AND**  
11 **THE TOLLING OF THE STATUTE OF LIMITATIONS**

12 62. Throughout the Class Period, Defendants affirmatively and  
13 fraudulently concealed their unlawful conduct from discovery by Plaintiff.

14 63. Plaintiff did not discover, nor could have discovered through the  
15 exercise of due diligence, the existence of the conspiracy and Defendants' and their  
16 co-conspirators' involvement in the conspiracy before July 23, 2015, when the  
17 Department of Justice's investigation became public.

18 64. Because the conspiracy was actively concealed until July 23, 2015,  
19 Plaintiff was unaware of Defendants' and their co-conspirators' unlawful conduct.  
20 Until that time, Plaintiff was unaware that he was paying artificially-inflated prices  
21 for seafood.

22 65. The affirmative acts of Defendants and their co-conspirators,  
23 including acts in furtherance of the conspiracy, were wrongfully concealed and  
24 conducted in a manner that precluded detection.

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

28 67. Defendants and their co-conspirators met and communicated secretly

1 concerning the pricing and marketing of PSPs so as to avoid detection.

2 68. Plaintiff could not have discovered the alleged conspiracy at an earlier  
3 date by the exercise of reasonable diligence because of the deceptive practices and  
4 techniques employed by Defendants and their co-conspirators to avoid the  
5 detection of, and fraudulently conceal, their contract, conspiracy, or combination.  
6 Defendants' conspiracy was fraudulently concealed by various means and  
7 methods, including, but not limited to, secret meetings, misrepresentations to  
8 customers, and surreptitious communications among Defendants and their co-  
9 conspirators via telephone or in in-person meetings in order to prevent the  
10 existence of written records.

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

15 70. None of the facts or information available to Plaintiff prior to July 23,  
16 2015, if investigated with reasonable diligence, could or would have led to the  
17 discovery of the conspiracy prior to July 23, 2015.

18 71. As a result of Defendants' and their co-conspirators' fraudulent  
19 concealment of the conspiracy, the running of any statutes of limitations has been  
20 tolled with respect to Plaintiff's claims of anticompetitive or unfair business  
21 practice conduct alleged in this Complaint.

22 **CAUSES OF ACTION**

23 **FIRST CLAIM FOR RELIEF**

24 **Violation of Section 1 of the Sherman Act, 15 U.S.C. § 1**  
25 **(On Behalf of The Sherman Act Nationwide Class for Injunctive Relief)**

26 72. Plaintiff Thomas E. Willoughby III repeats and reasserts each of the  
27 allegations contained in the preceding paragraphs as if fully set forth herein.  
28

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

5           74. Defendants' anticompetitive acts were intentionally directed at the  
6 United States market for shelf-stable packaged seafood products and had a  
7 substantial and foreseeable effect on interstate commerce by raising and fixing  
8 shelf-stable packaged seafood prices throughout the United States.

9           75. The contract, combination or conspiracy had the following direct,  
10 substantial, and reasonably foreseeable effects upon commerce in the United  
11 States and upon import commerce:

- 12           a. prices charged to, and paid by, Plaintiff and members of the  
13 Classes were artificially raised, fixed, maintained, or stabilized  
14 at supracompetitive levels;
- 15           b. Plaintiff and members of the Classes have been  
16 deprived of the benefits of free, open and unrestricted  
17 competition in the shelf-stable packaged seafood  
18 products market in the United States; and.
- 19           c. competition in establishing prices paid for shelf-stable  
20 packaged seafood products has been unlawfully  
21 restrained, suppressed, or eliminated.

22           76. Defendants and their co-conspirators' anticompetitive activities  
23 have directly and proximately caused injury to Plaintiff and members of the  
24 Classes in the United States.

25           77. As a direct, foreseeable, and proximate result of Defendants'  
26 anticompetitive conduct, Plaintiff and the Classes have been injured in their  
27 business and property and are threatened with further injury. Accordingly, Plaintiff  
28 and the Classes seek injunctive relief.

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**SECOND CLAIM FOR RELIEF**  
**Violation of Section 16720 of the**  
**California Business and Professions Code (“The Cartwright Act”)**  
**(On Behalf of the California Class)**

78. Plaintiff Thomas E. Willoughby III repeats and reasserts each of the allegations contained in the preceding paragraphs as if fully contained herein.

79. The violations of federal antitrust law set forth above also constitute violations of section 16720 of California Business and Professions Code.

80. During the Class Period, Defendants and their co-conspirators engaged in a continuing contract, combination or conspiracy in unreasonable restraint of trade and commerce and other anticompetitive conduct alleged above in violation of California Business and Professions Code section 16700, *et seq.*

81. Defendants’ anticompetitive acts described above were knowing, willful and constitute violations or flagrant violations of California Business and Professions Code section 16700, *et seq.*

82. As a direct and proximate result of Defendants’ unlawful conduct, Plaintiff and members of the California Class have been injured in their business and property in that they paid more for PSPs than they otherwise would have paid in the absence of Defendants’ unlawful conduct. As a result of Defendants’ violation of section 16720 of California Business and Professions Code, Plaintiff and members of the California Class seek treble damages and their cost of suit, including reasonable attorneys’ fees, pursuant to section 16750(a) of the California Business and Professions Code.

**THIRD CLAIM FOR RELIEF**  
**Violations of California Business and Professions Code §§ 17200 *et seq.***  
**(the “UCL”)**  
**(On Behalf of the California Class)**

83. Plaintiff Thomas E. Willoughby III repeats and reasserts each of the allegations contained in the preceding paragraphs.

84. The violations of federal antitrust law set forth above also constitute



1 violations of section 17200, *et seq.* of California Business and Professions Code,  
2 also known as the Unfair Competition Law (or “UCL”).

3 85. Defendants have engaged in unfair competition or unfair,  
4 unconscionable, deceptive or fraudulent acts or practices in violation of the UCL  
5 by engaging in the acts and practices specified above.

6 86. This claim is instituted pursuant to sections 17203 and 17204 of  
7 California Business and Professions Code, to obtain restitution from these  
8 Defendants for acts, as alleged herein, that violated the UCL.

9 87. Defendants’ conduct as alleged herein violated the UCL. The acts,  
10 omissions, misrepresentations, practices and non-disclosures of Defendants, as  
11 alleged herein, constituted a common, continuous, and continuing course of  
12 conduct of unfair competition by means of unfair, unlawful, and/or fraudulent  
13 business acts or practices within the meaning of the UCL, including, but not  
14 limited to, the following: (1) the violations of Section 1 of the Sherman Act, as set  
15 forth above; and (2) the violations of Section 16720, *et seq.*, of California Business  
16 and Professions Code, set forth above.

17 88. Defendants’ acts, omissions, misrepresentations, practices, and non-  
18 disclosures, as described above, whether or not in violation of section 16720, *et*  
19 *seq.*, of California Business and Professions Code, and whether or not concerted or  
20 independent acts, are otherwise unfair, unconscionable, unlawful or fraudulent;

21 89. Plaintiff and members of the California Class are entitled to full  
22 restitution and/or disgorgement of all revenues, earnings, profits, compensation,  
23 and benefits that may have been obtained by Defendants as a result of such  
24 business acts or practices.

25 90. The illegal conduct alleged herein is continuing, and there is no  
26 indication that Defendants will not continue such activity into the future.

27 91. The unlawful and unfair business practices of Defendants, and each of  
28 them, as described above, have caused and continue to cause Plaintiff and the

1 members of the California Class to pay supra competitive and artificially-inflated  
2 prices for PSPs sold in the State of California. Plaintiff and the members of the  
3 California Class suffered injury in fact and lost money or property as a result of  
4 such unfair competition.

5 92. As alleged in this Complaint, Defendants and their co-conspirators  
6 have been unjustly enriched as a result of their wrongful conduct and by  
7 Defendants' unfair competition. Plaintiff Thomas E. Willoughby III and the  
8 members of the California Class are accordingly entitled to equitable relief  
9 including restitution and/or disgorgement of all revenues, earnings, profits,  
10 compensation, and benefits that may have been obtained by Defendants as a result  
11 of such business practices, pursuant to California Business and Professions Code  
12 sections 17203 and 17204.

13 **FOURTH CLAIM FOR RELIEF**  
14 **Violation of the Maine's Antitrust Statute,**  
15 **Me. Rev. Stat. Ann. tit. 10 § 1101, *et seq.***  
16 **(On Behalf of the Maine Class)**

17 93. Plaintiff Thomas E. Willoughby III repeats and reasserts each of the  
18 allegations contained in the preceding paragraphs as if fully set forth herein.

19 94. By reason of the conduct alleged herein, Defendants have violated  
20 Me. Rev. Stat. Ann. tit. 10 § 1101, *et seq.*

21 95. Defendants entered into a contract, combination, or conspiracy  
22 between two or more persons in restraint of, or to monopolize, trade or commerce  
23 in the PSP market, a substantial part of which occurred within Maine.

24 96. Defendant established, maintained, or used a monopoly, or attempted  
25 to establish a monopoly, of trade or commerce in the Relevant Markets, a  
26 substantial part of which occurred within Illinois, for the purpose of excluding  
27 competition or controlling, fixing, or maintaining prices in the PSP Market.

28 97. Defendants' violations of Maine law were flagrant.

98. Defendants' unlawful conduct substantially affected Maine's trade

1 and commerce.

2 99. As a direct and proximate cause of Defendants' unlawful conduct, the  
3 members of the Maine Class have been injured in their business or property and  
4 are threatened with further injury.

5 100. By reason of the foregoing, the Maine Class is entitled to seek all  
6 forms of relief, including treble damages, reasonable attorney's fees and costs, and  
7 injunctive relief available under Me. Rev. Stat. Ann. tit. 10 § 1104.

8 **PRAYER FOR RELIEF**

9 Accordingly, Plaintiff, on behalf of himself and the Classes of all others so  
10 similarly situated, respectfully requests that:

11 a. The Court determine that this action may be maintained as a class  
12 action under Rule 23(a), (b)(2)-(3) of the Federal Rules of Civil Procedure, and  
13 direct that reasonable notice of this action, as provided by Rule 23(c)(2) of the  
14 Federal Rules of Civil Procedure, be given to each and every member of the  
15 Classes;

16 b. The unlawful conduct alleged herein be adjudged and decreed in  
17 violation of Sections 1 of the Sherman Act; Section 3 of the Clayton Act; the  
18 California Cartwright Act; the California Unfair Competition Law; and Maine's  
19 Antitrust Statute;

20 c. Plaintiff and the members of the Classes recover damages, to the  
21 maximum extent allowed under such laws, and that a joint and several judgment in  
22 favor of Plaintiff and the members of such Classes be entered against Defendants  
23 in an amount to be trebled to the extent such laws permit;

24 d. Plaintiff and the members of the Classes recover damages, to the  
25 maximum extent allowed by such laws, in the form of restitution and/or  
26 disgorgement of profits unlawfully gained from them;

27 e. Defendants, their affiliates, successors, transferees, assignees and  
28 other officers, directors, partners, agents and employees thereof, and all other

1 persons acting or claiming to act on their behalf or in concert with them, be  
2 permanently enjoined and restrained from in any manner continuing, maintaining  
3 or renewing the conduct, contract, conspiracy, or combination alleged herein, or  
4 from entering into any other contract, conspiracy, or combination having a similar  
5 purpose or effect, and from adopting or following any practice, plan, program, or  
6 device having a similar purpose or effect;

7 f. Plaintiff and the members of the Classes be awarded pre- and post-  
8 judgment interest as provided by law, and that such interest be awarded at the  
9 highest legal rate from and after the date of service of this Complaint;

10 g. Plaintiff and the members of the Classes recover their costs of suit,  
11 including reasonable attorneys' fees, as provided by law; and

12 h. Plaintiff and members of the Classes have such other and further relief  
13 as the case may require and the Court may deem just and proper.

14 **JURY DEMAND**

15 Plaintiff, on behalf of himself and the Classes of all others similarly situated,  
16 hereby demands a trial by jury on all issues so triable pursuant to Rule 38 of the  
17 Federal Rules of Civil Procedure.

18 Dated: September 23, 2015

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