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**SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

THE STATE OF WASHINGTON,

Plaintiff,

v.

STARKIST COMPANY; DONGWON  
INDUSTRIES CO., LTD., and;  
CHRISTOPHER LISCHEWSKI

Defendants.

NO. 20-2-09491-9 SEA

COMPLAINT FOR RESTITUTION,  
INJUNCTION, AND OTHER  
RELIEF UNDER THE  
WASHINGTON STATE  
CONSUMER PROTECTION ACT,  
RCW 19.86

**CLERK’S ACTION REQUIRED**

Plaintiff, State of Washington, through its Attorney General, brings this action as *parens patriae* on behalf of persons residing in the State against Dongwon Industries Co., Ltd. (“Dongwon”); StarKist Company (“StarKist”); and Christopher Lischewski (collectively hereinafter “Defendants”) seeking restitution, penalties, costs and fees, and injunctive relief.

**I. NATURE OF THE CASE**

1. This action arises out of a conspiracy involving the three largest domestic producers of shelf-stable packaged tuna (“Packaged Tuna”) to increase prices of Packaged Tuna in the United States. Defendants and their co-conspirators engaged in violations of state antitrust law prohibiting anticompetitive conduct from at least May 2004 through at least July 2015 (the “Conspiracy Period”). Defendants’ actions included, but were not limited to, conspiring to suppress and eliminate competition by agreeing to fix prices by raising or artificially maintaining higher prices in the market for Packaged Tuna in the United States, including in Washington.

COMPLAINT FOR RESTITUTION,  
INJUNCTION, AND OTHER RELIEF

1 ATTORNEY GENERAL OF WASHINGTON  
Antitrust Division  
800 Fifth Avenue, Suite 2000  
Seattle WA 98104  
(206) 464-7744

1           2.       Defendants StarKist, Dongwon, and Lischewski together with Bumble Bee  
2 Foods LLC (“Bumble Bee”); Del Monte Corporation (“Del Monte”); Thai Union Group Public  
3 Company Limited (“Thai Union”); and Tri-Union Seafoods LLC d/b/a Chicken of the Sea  
4 International (“Tri-Union” or “COSI”) have conspired to raise, fix, stabilize, or maintain prices  
5 of and restrict capacity within the market for Packaged Tuna during the Conspiracy Period.

6           3.       Defendants and their co-conspirators include the largest producers of packaged  
7 seafood products in the United States. Together, StarKist, Bumble Bee, and COSI produced  
8 upwards of 80 percent of all Packaged Tuna sold in the United States during the Conspiracy  
9 Period.

10          4.       With slowing and stagnating growth and margins in the United States Packaged  
11 Tuna industry, beginning in or about in 2004, Defendants and their co-conspirators directly  
12 coordinated: (1) can and pouch sizes for Packaged Tuna; (2) pricing of Packaged Tuna; (3)  
13 promotional activity for Packaged Tuna; and (4) refraining from marketing “FAD-Free”  
14 labeling for Packaged Tuna under their major brands. As part of this coordination, Defendants  
15 and their co-conspirators agreed and conspired to artificially increase prices for Packaged Tuna  
16 to record highs in spite of reduced consumer interest and falling demand. The impacts of  
17 Defendants’ unlawful and anticompetitive conduct are ongoing and continue to this day.

18          5.       The conspiracy between Defendants and their co-conspirators affected hundreds  
19 of millions of dollars in United States commerce.

20          6.       The conspiracy was the subject of a criminal antitrust investigation by the United  
21 States Department of Justice (“DOJ”) that resulted in guilty pleas by StarKist, Bumble Bee, and  
22 senior executives at all three companies; cooperation in the DOJ investigation by COSI; and  
23 the criminal conviction of Bumble Bee President and CEO Lischewski.

24          7.       The State of Washington, through its Attorney General, brings this action as  
25 *parens patriae* on behalf of persons residing in the State of Washington during the Conspiracy  
26 Period pursuant to RCW 19.86, the Consumer Protection Act.



1 **III. THE PARTIES**

2 **A. Plaintiff**

3 12. The Plaintiff is the State of Washington as *parens patriae* on behalf of residents  
4 of the State of Washington during the Conspiracy Period, by and through its Attorney General.

5 13. The State of Washington has an interest in maintaining the integrity of markets  
6 operating within its boundaries, protecting its citizens from anticompetitive and unlawful  
7 practices, and supporting the general welfare of its residents and its economy.

8 **B. Defendants**

9 14. Defendant StarKist Company is a Delaware corporation with its principal place  
10 of business at 225 North Shore Drive, Suite 400, Pittsburgh, PA 15212. Although StarKist's  
11 annual revenue is not publicly reported, the Pittsburgh Post-Gazette reported in early 2010 that  
12 StarKist's annual revenue was between \$650 and \$670 million. That figure likely grew to  
13 approximately \$1 billion in 2014. In 2008, Dongwon purchased StarKist for approximately  
14 \$363 million and thereafter, including during the Conspiracy Period, StarKist operated as a  
15 wholly-owned and controlled subsidiary of Dongwon. During the Conspiracy Period, StarKist  
16 manufactured, marketed, sold and/or distributed Packaged Tuna, directly or indirectly through  
17 its subsidiaries or affiliates, to customers throughout the United States and Washington. StarKist  
18 directly participated in the conspiracy alleged in this Complaint and purposefully directed this  
19 conduct at the United States and Washington State; produced and sold Packaged Tuna in the  
20 United States and its territories, including Washington State; intentionally sold price-fixed  
21 Packaged Tuna to consumers in the United States and Washington State; conspired with the  
22 other Defendants' and their co-conspirators; and engaged in the unlawful conduct alleged in  
23 this Complaint in violation of RCW 19.86, the Consumer Protection Act.

24 15. Defendant Dongwon Industries Co. Ltd. is a corporation organized and doing  
25 business under the laws of South Korea, with its headquarters located at Dongwon Industries  
26 Building 7th Floor, Mabang-ro 68 (Yangjae-dong), Seocho-gu, Seoul, South Korea. Dongwon

1 is a publicly traded company listed on the Korean Stock Exchange. It is the largest producer of  
2 Packaged Tuna in South Korea. Dongwon is part of the conglomerate Dongwon Group, which  
3 has annual Packed Tuna revenue of approximately \$1.4 billion. Dongwon is a vertically  
4 integrated fishing conglomerate that owns the world's largest fishing fleet. Dongwon has an  
5 ownership stake in U.S. businesses besides StarKist, including a 12.5 percent stake in Silver  
6 Bay Seafoods, LLC (a fishery in Sitka, Alaska) and a 50 percent majority interest in DW Global,  
7 Inc. (a shipping and import/export company located in Commerce, California). In 2008,  
8 Dongwon bought StarKist, and Dongwon is StarKist's parent. Dongwon sells a substantial  
9 volume of Packaged Tuna (and other shelf-stable packaged seafood products) in the United  
10 States, and according to its quarterly and annual reports, it typically derives more than 50  
11 percent of its global revenue from the United States. During the Conspiracy Period, Dongwon  
12 manufactured, marketed, sold and/or distributed Packaged Tuna, directly or indirectly through  
13 its subsidiaries or affiliates, to customers throughout the United States and Washington.

14 16. Dongwon Industries is a closely-knit business group based in South Korea under  
15 the control of a single family or extended family, with key flagship firms that are used as the  
16 instruments of control of other firms within the group. It has four key features of similar closely-  
17 knit business groups: (1) the governance structure of the group involves family or extended  
18 family control; (2) the formal organizational structure involves a group headquarters, located in  
19 an actual or de facto holding company, sometimes known as a "flagship" company, which  
20 controls a network of subsidiaries, which fall under the control of the family, the group as a  
21 whole, and of flagship firms within the group; (3) the business structure of the firm encompasses  
22 a number of discrete products and services, some of which are wholly unrelated and others that  
23 are effectively vertically integrated; and (4) these groups are characterized by strong internal  
24 cultures of hierarchy, familism and loyalty, with family members of the founder or his cohorts  
25 also occupying key managerial positions within the group.

1           17.     The Dongwon family of companies was founded in 1969 and is dominated by  
2 Chairman Jae-chul Kim (“Chairman Kim”) and members of his family, as described in more  
3 detail below. The group headquarters is in Seoul, South Korea, where its holding company,  
4 Dongwon Enterprises, is located. Through its subsidiaries, Dongwon operates in a number of  
5 business sectors including marine products, other food products, feed products and pet food,  
6 packing materials, and aluminum foil products. Defendants Dongwon and StarKist exhibit an  
7 internal culture of hierarchy and familism, with members of Chairman Kim’s family being put  
8 in key positions in both companies and executives at Dongwon, Dongwon Enterprises, and  
9 various other Dongwon subsidiaries being routinely seconded to StarKist to fill managerial  
10 roles. Dongwon, run by Chairman Kim, is the parent entity for StarKist, but his control over the  
11 Dongwon family of companies was such that under his broad authority, he could (and in fact  
12 did) command executives of the holding company or from sister subsidiary companies to either  
13 oversee the business of StarKist from South Korea or relocate in the United States and help run  
14 StarKist. This was done without regard for which Dongwon subsidiary the individual worked  
15 for, and for the purposes of involvement in StarKist’s management, all Dongwon personnel  
16 were functionally Dongwon Industries personnel subject to the direct control of Chairman Kim.  
17 In other words, Dongwon does not follow the principles of corporate separateness that are  
18 expected of companies incorporated in the United States and instead acts as a single integrated  
19 enterprise. Accordingly, acts taken by employees of Dongwon’s corporate affiliates in  
20 furtherance of the conspiracy, as alleged in detail below, were taken on behalf of the interests  
21 of Dongwon and under the control of Dongwon.

22           18.     Dongwon directly participated in the conspiracy alleged in this Complaint and  
23 purposefully directed this conduct at the United States and Washington State; produced and  
24 sold canned tuna in the United States and its territories, including Washington State;  
25 intentionally sold price-fixed Packaged Tuna to consumers in the United States and Washington  
26 State; used its dominance or control of StarKist’s raw material purchasing and tuna business to

1 conspire with the other Defendants' and their co-conspirators; and engaged in the unlawful  
2 conduct alleged in this Complaint in violation of RCW 19.86, the Consumer Protection Act.

3 19. Dongwon and co-conspirators had (1) telephone conversations through their  
4 senior executives and sales personnel to announce collusive price increases, (2) a teleconference  
5 during which it agreed with the plan not to launch FAD-free Packaged Tuna products in the  
6 United States, and (3) telephone and email conversations wherein the competitors' senior  
7 executives and sales personnel assured one another they would not compete regarding the price  
8 of Packaged Tuna sold to customers.

9 20. After Dongwon acquired StarKist from Del Monte in 2008, a Dongwon  
10 Executive told Bumble Bee's President and CEO Lischewski that "we must cooperate as an  
11 industry to overcome those challenges we face." Lischewski in turn internally circulated the  
12 communication with executives at Bumble Bee and expressed his hopes that Dongwon was a  
13 company that will work with us to bring about a turnaround in the negative category trends we  
14 face. Later in 2008, Dongwon sought assurances from Del Monte that all customers were  
15 charged the price increases agreed upon by the conspirator and Del Monte employees assured  
16 Dongwon that there were no exceptions.

17 21. Alternatively, during the Conspiracy Period following its purchase of StarKist,  
18 Dongwon participated in the conspiracy by and through StarKist, which acted as Dongwon's  
19 alter ego or agent. Dongwon dominated or controlled StarKist's Packaged Tuna business as  
20 reflected by, among other actions, Dongwon's domination or control of StarKist's production,  
21 pricing, hiring, budgeting, capitalization and/or marketing of Packaged Tuna. During this time  
22 period, Dongwon effectively controlled and took over performance of the day-to-day operations  
23 of StarKist's Packaged Tuna business, and there was such unity of interest and ownership  
24 between Dongwon and StarKist that the individuality or separateness of the two companies  
25 ceased with respect to StarKist's Packaged Tuna business.

1           22.     StarKist’s status as the alter ego or agent of Dongwon is evidenced by, among  
2 other facts, one or more of the facts alleged below that occurred during the Conspiracy Period.

3           23.     Dongwon used StarKist as a mere shell, instrumentality, or conduit for a single  
4 venture involving the sale of price-fixed Packaged Tuna in the United States caught, processed,  
5 and/or packaged by Dongwon in South Korea and Thailand for the ultimate benefit of  
6 Dongwon. Dongwon used StarKist to market Dongwon’s product. StarKist enabled Dongwon  
7 to be vertically integrated with respect to the U.S. operations. As a result of this vertical  
8 integration, Dongwon and StarKist effectively functioned as a single entity for purposes of the  
9 conspiracy. With respect to the Packaged Tuna produced by Dongwon in South Korea and  
10 Thailand and sold in the United States, StarKist merely acted as Dongwon’s marketing conduit  
11 to sell Dongwon’s Packaged Tuna under the Dongwon-owned StarKist label.

12           24.     Dongwon dominated or controlled StarKist’s marketing of Packaged Tuna in the  
13 United States. For example, and without limitation, Dongwon’s website states: “StarKist is an  
14 iconic tuna brand in the United States, and has been controlled by Dongwon Group since 2008,  
15 accompanying Dongwon Group on its journey to globalization . . . . Through the acquisition of  
16 StarKist, Dongwon Group has secured an opportunity to take off as the world’s biggest tuna  
17 company, and will become de facto a globalized enterprise.” Dongwon and StarKist presented  
18 themselves as a single, vertically integrated entity. StarKist’s website states that “Dongwon  
19 Industries is one of the world’s largest tuna catching companies with a fleet of 36 boats.  
20 Dongwon’s world class fish procurement and processing capacity builds on StarKist’s national  
21 brand recognition and distribution networks in the United States to bring world-class seafood  
22 to customers worldwide.”

23           25.     Dongwon and StarKist used the same offices and locations in the United States.  
24 Dongwon’s website lists StarKist’s U.S. office as one of its global branch offices.

25           26.     Dongwon and StarKist had overlapping Board Members and key executives who  
26 dominated or controlled StarKist. For example, and without limitation, in about September



1 2014, Andrew Choe (“A. Cho”) became the President and CEO of StarKist. A. Choe was  
2 seconded to StarKist in April 2012 as the Senior Vice-President of its supply chain. Previously,  
3 A. Choe had held an executive position at Dongwon as Director of Strategic Planning. Nam-  
4 Jung Kim (“NJ Kim”), son of Chairman Kim, served as the COO of StarKist from about 2012  
5 until October 2014, when he was promoted to Vice Chairman of StarKist. He currently serves  
6 on the board of directors for StarKist and Dongwon. Before being sent to join StarKist, NJ Kim  
7 was Vice-President of Dongwon F&B (a Dongwon subsidiary) and Dongwon Enterprise Co.  
8 (the Kim family’s holding company that owns Dongwon Industries). Since 2008, NJ Kim has  
9 served as the Head of the Finance and Planning Department at Dongwon Systems and served  
10 as Vice President of its construction unit. Additionally, according to Forbes, in preparation for  
11 Chairman Kim’s succession, “the founder has been transferring ownership of the private family  
12 holding company, Dongwon Enterprise Co., which owns stakes in [Dongwon and other  
13 affiliates], to Nam-Jung. Jae-Chul holds a 24.5% stake and Nam-Jung, 68%.” Accordingly, NJ  
14 Kim owned a controlling interest in Dongwon while serving as StarKist’s COO and Vice  
15 Chairman. The position of COO was created specifically for him, so that he could lead the  
16 “continued growth and expansion of Dongwon-StarKist global business.” Also, Hyung-Joo  
17 Kim, CFO of Dongwon F&B, was seconded to StarKist in 2012 to serve as CFO. In-Gu Park  
18 (“IG Park”), the Chairman of the Board of StarKist, also served as its Acting President from  
19 November 2010 to March 2011. IG Park serves as CEO of Dongwon Precision Machinery  
20 Company, and has also served as CEO and Vice Chairman at Dongwon F&B and Dongwon  
21 Enterprise. During the Conspiracy Period, IG Park chaired StarKist’s board of directors while  
22 simultaneously sitting on the board or serving as an officer (or both) of other Dongwon  
23 companies. Additionally, StarKist’s board meetings were often held in South Korea so that  
24 Dongwon executives could easily attend them.

25           27. Dongwon appointed people who were involved in the day-to-day operations of  
26 StarKist including people who participated in the conspiracy as Dongwon intended. For

1 instance, and without limitation, Dongwon appointed senior executives at StarKist—including  
2 at least In-Soo Cho (IS Cho), A. Choe, and Sam Lee. Additionally, Dongwon dismissed several  
3 StarKist executives in 2012 and replaced them with employees from within the Dongwon  
4 corporate family, including Hyung-Joo Kim as CFO. After Dongwon’s acquisition of StarKist,  
5 American executives at StarKist Company began to leave-voluntarily and involuntarily. One  
6 report indicated that a “plethora of executives from Dongwon Industries’ Seoul headquarters-  
7 complete with translators” had “descend[ed] on Pittsburgh to sort out the ‘challenges’ the  
8 company is going through.” One source stated that “there’s so much American management  
9 leaving and probably even more so after this announcement.”

10 28. Dongwon micromanaged StarKist’s affairs and disregarded principles of  
11 corporate separateness with respect to StarKist. While serving as Dongwon’s Director of  
12 Strategic Planning (a position he held through March 2012), A. Choe also micromanaged the  
13 day-to-day affairs of StarKist and monitored StarKist’s collusive efforts.

14 29. Dongwon as the parent, owned StarKist, the wholly owned subsidiary of  
15 Dongwon. Dongwon purchased 100 percent of StarKist in 2008.

16 30. Due to the unlawful conduct alleged in this Complaint, StarKist earned profits  
17 in excess of what it would have earned in a competitive market. StarKist transferred this ill-  
18 gotten gain to its parent, Dongwon, by paying out the unlawfully obtained profits and other  
19 conspiracy proceeds to Dongwon in the form of dividends and other transfer payments.  
20 Dongwon knowingly profited from StarKist’s participation in the conspiracy and knowingly  
21 accepted the proceeds of the conspiracy and has been unjustly enriched. As a result of these  
22 facts, considered alone or in combination with one or more of the foregoing other facts,  
23 adherence to the fiction of the separate existence of Dongwon and StarKist would sanction a  
24 fraud or promote an injustice, and an inequitable result or an injustice would occur if the  
25 corporate form were elevated over substance.

1           31. Defendant Christopher D. Lischewski was Bumble Bee’s CEO and President  
2 from 1999 through the entirety of the Conspiracy Period. He is a resident of San Diego County,  
3 California. Plaintiff sues Lischewski for his participation in the conspiracy between at least  
4 2004 and 2015.

5           32. Lischewski was a primary participant in the price-fixing conspiracy. Lischewski  
6 ensured that customers paid more for Packaged Tuna by personally directing and engaging in  
7 the illegal price-fixing conspiracy alleged herein. Lischewski directed and supervised the sales,  
8 manufacturing, marketing, advertising, and distribution of Bumble Bee’s price-fixed Packaged  
9 Tuna products that were purchased in Washington State. He had control of, and direct  
10 participation in the illegal activities, and was one of the moving forces behind the price fixing  
11 conspiracy.

12           33. During Lischewski’s four-week trial in the U.S. District Court for the Northern  
13 District of California, the government asserted Lischewski was the mastermind behind the  
14 price-fixing conspiracy. The trial featured hundreds of exhibits and testimony from ten  
15 witnesses including senior executives at each of the three packaged-seafood companies,  
16 including former COSI CEO Shue Wing Chan and Renato Curto, the former president and CEO  
17 of Bumble Bee tuna supplier Tri Marine, as well as Lischewski’s former employees, Kenneth  
18 Worsham and Scott Cameron, who all testified Lischewski had directed and/or personally  
19 participated in the conspiracy.

20           34. The jury returned its guilty verdict after just 30 minutes of deliberations. In  
21 denying Lischewski’s post-verdict motion for acquittal, the trial judge said there was “ample  
22 evidence on which the jury could have found a conspiracy between Bumble Bee and StarKist  
23 and/or Chicken of the Sea,” calling the evidence “legion.”

24           35. Lischewski directly participated in the conspiracy and intentionally sold price-  
25 fixed Packaged Tuna to consumers in the United States and Washington State, conspired with  
26

1 the other Defendants' and their co-conspirators, and he personally engaged in the unlawful  
2 conduct alleged in this Complaint in violation of RCW 19.86, the Consumer Protection Act.

#### 3 **IV. CO-CONSPIRATORS AND AGENTS**

4 36. On information and belief, various other persons, corporations, partnerships, or  
5 business entities unknown to Plaintiff at present, conspired with the Defendants in violation of  
6 the laws alleged in this complaint and are co-conspirators with Defendants in their unlawful  
7 restraint of trade. These co-conspirators engaged in conduct and made statements in furtherance  
8 of the conspiracy alleged herein.

9 37. Defendants' co-conspirators include but are not limited to Bumble Bee; Del  
10 Monte; Thai Union; and COSI.

11 38. Any reference herein to any action, transaction, or statement by a corporation  
12 means that that corporation engaged in such activity through its officers, directors, employees,  
13 agents, or representatives while representing the corporation.

14 39. Defendants are also liable for acts committed by companies acquired through  
15 merger, acquisition, or otherwise, in furtherance of the alleged conspiracy.

#### 16 **V. THE TUNA INDUSTRY**

##### 17 **A. Production of Packaged Tuna**

18 40. There are several levels in the production of Packaged Tuna. Initially, the tuna  
19 is caught by fishing vessels, which operate in the Pacific, Atlantic, and Indian Oceans with the  
20 majority of tuna coming from the Pacific Ocean. After it is caught, the fish is frozen or  
21 refrigerated. Both Dongwon and Thai Union control extensive tuna fishing fleets used, at least  
22 in part, to supply fish to StarKist and COSI, respectively. In addition to the fleets controlled by  
23 Dongwon and Thai Union, tuna trading companies buy the fish from fishing vessels and  
24 coordinate transshipment of catches to processors, including Defendants. During the  
25 Conspiracy Period, the major trading companies were: the Tri-Marine Group, a foreign  
26 organization that does business in the United States through Tri-Marine International, Inc., Tri-

1 Marine Management Company, LLC, Tri Marine Fishing Management LLC, Tri Marine Fish  
2 Company, and The Tuna Store, LLC; Itochu Corporation, a Japanese company in the fishing  
3 business through its Food Company, which it owns and controls; and Fong Cherng Fishery  
4 Company Ltd. (“FCF”), a privately-held Taiwanese company.

5 41. After fish trading companies buy the fish or Dongwon-controlled or TUG-  
6 controlled vessels catch the tuna, they arrange its delivery to a processing plant where it is  
7 cooked (usually by steaming), cleaned, filleted, and prepared for canning or packaging.

8 42. Because the tuna are generally caught far out at sea, raw tuna is usually delivered  
9 to canneries or processing facilities in a frozen or refrigerated state. Upon delivery to a  
10 processing plant, an initial quality control inspection is performed. Tuna of acceptable quality  
11 is transferred to large ovens for “pre-cooking.” Following pre-cooking and cleaning, tuna is  
12 transmitted into a filling machine which processes the tuna into cans or pouches in pre-set  
13 amounts. The containers are then closed and sealed in sealing machines. Each package has a  
14 code that identifies the plant, product, date, batch, and other identifying information. Filled and  
15 sealed packages are then cooked under pressure to make the products commercially sterile and  
16 so that they will have a long shelf life.

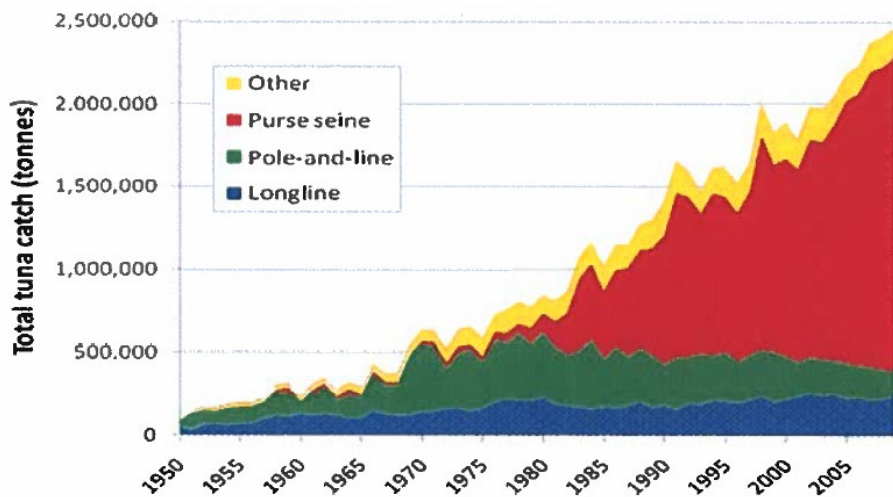
17 43. Packaged Tuna is largely sold in the original packaging, directly to wholesale  
18 distributors, who, in turn, re-sell, also in the original packaging, to grocery stores, restaurants,  
19 school districts, and other outlets. Additionally, Packaged Tuna is sold both directly and  
20 indirectly, in the original packaging, to club warehouses, retail groceries, grocery cooperatives,  
21 mass merchandisers, and drug stores, among others, who resell Packaged Tuna to end-user  
22 consumers in the original packaging. Packaged Tuna is a commodity product.

23 **B. Tuna Supply Substantially Increased While Demand Decreased**

24 44. Technological advances in fishing over the last several decades, due largely to  
25 the advent of purse seine fishing for tuna (a method involving use of large nets to catch entire  
26 schools of fish) and the use of Fishing Aggregation Devices (“FADs”) (man-made objects such

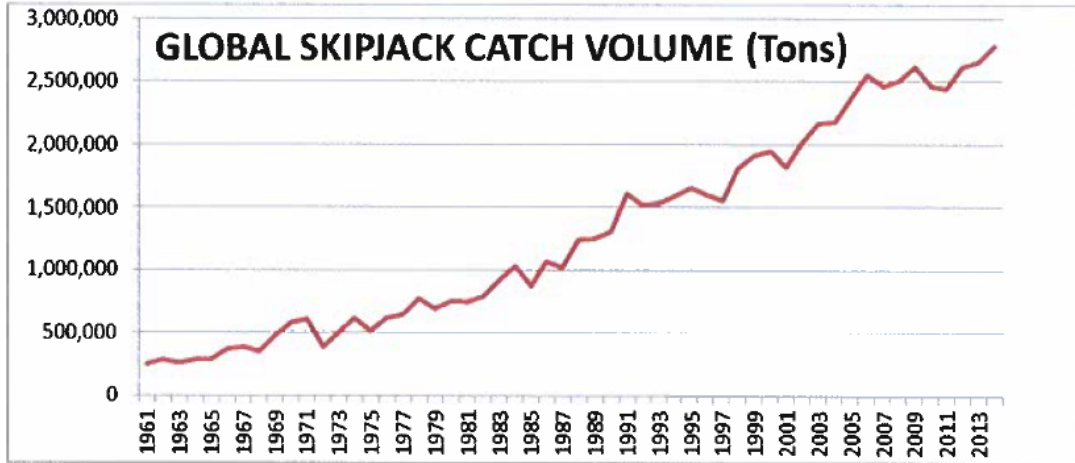
1 as floats or buoys used to attract schools of fish) have increased the volume of skipjack and  
2 albacore caught annually. Compared to 1975 when purse seining accounted for a negligible  
3 share of the global tuna catch, the method is now responsible for approximately 65 percent of  
4 the 4.9-million-metric-ton global tuna catch.

5 45. The following chart demonstrates the proliferation of purse seining in the  
6 Western and Central Pacific Ocean (which sources approximately 60 percent of the world's  
7 tuna) relative to other methods of tuna fishing, such as longline and pole fishing methods:

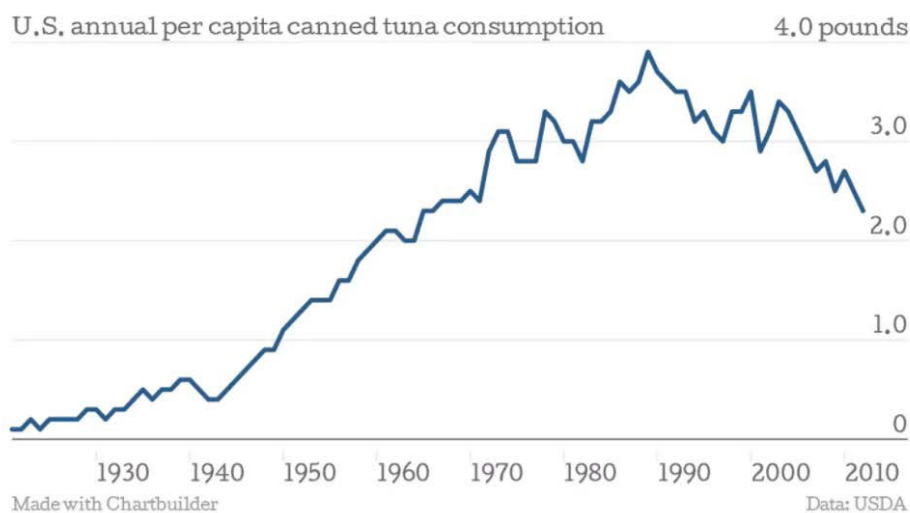


16 46. The advances in fishing technology and increased efficiency substantially  
17 lowered the cost of commercial tuna fishing. According to the Pacific Islands Forum Fisheries  
18 Agency (“FFA”), between 1986 and 2007, the average catch per tuna fishing vessel roughly  
19 doubled, from 3,750 metric tons to 7,100 metric tons per year. This, in turn, has spurred  
20 substantial recent investment in fishing vessels. Between approximately 2007 and 2011, the  
21 number of tuna fishing vessels increased by more than 25 percent.

22 47. The combination of increased investment in fishing vessels and increased  
23 efficiency resulted in dramatic increases in the volume of canning-grade tuna caught annually.  
24 As depicted in the chart below, the volume of skipjack tuna caught annually between 1984 and  
25 2014 nearly tripled.  
26



48. While supply dramatically increased, demand for and consumption of Packaged Tuna has declined substantially over the last three decades. Publicly available information indicates consumption of Packaged Tuna in the United States peaked at nearly four pounds per person in the early 1990s, and then began to fall, to 3.4 pounds per capita in 2003, 3.1 pounds in 2005, approximately 2.5 pounds in 2009, and falling to 2.3 pounds in per capita in 2013, with consumption and demand continuing to decline thereafter. An article in the Washington Post graphically represented this decline by measuring United States annual per capita consumption from 1930 to 2010:







1           52. Defendants and their co-conspirators recognized the challenges posed by market  
2 conditions. Bumble Bee CEO Christopher Lischewski sounded an early warning at an industry  
3 conference in 1999, upbraiding industry leaders for a relentless battle for market share that had  
4 discounted prices by as much as 31 percent. “Rather than focus on innovation and growth,” he  
5 said, “the three major brands have fought an ‘unwinnable’ war to steal shares from one another.”  
6 Lischewski estimated the profit loss at \$200 million a year due to their competition for market  
7 share.

8           53. The solution, embraced by Defendants and their co-conspirators in 2004, was to  
9 enter into an unlawful agreement to increase prices of Packaged Tuna sold in the United States  
10 by, among other conduct, coordinating price increase announcements and pricing terms,  
11 secretly and collusively exchanging prospective pricing information and business plans, and  
12 collectively reducing quantity and restraining output.

13           54. Defendants and their co-conspirators implemented their conspiracy over a  
14 number of years through repeated meetings among high-level executives at industry  
15 conferences, meetings at restaurants, emails, telephone calls, and other frequent  
16 communication.

17           55. During the early years of the conspiracy, between 2004 and 2006, Defendants  
18 and their co-conspirators developed a common agreement or understanding that they would  
19 follow the price increases that each issued. In furtherance of this common agreement or  
20 understanding, they exchanged information on their future pricing plans via telephone, email,  
21 and other channels.

22           56. As a result of these and other collusive price information exchanges, Defendants  
23 and their co-conspirators were able to and did collusively increase prices of Packaged Tuna in  
24 the United States at least twice in 2004 and again in 2006.

25           57. By 2007, Defendants and their co-conspirators were exploring additional forms  
26 of collusive conduct. Del Monte—which owned StarKist until it was sold to Dongwon in

1 2008—recognized that all three brands could dramatically increase profits if each reduced its  
2 tuna can sizes from six ounces to five. Subsequently, in accordance with their unlawful  
3 agreement, StarKist, Bumble Bee, and COSI collusively downsized their six-ounce tuna cans  
4 to five ounces. This concerted action to reduce quantity itself constitutes price fixing but it also  
5 constitutes a conspiratorial price increase, as they not only shrank the can without a  
6 commensurate price reduction, they also colluded to raise prices on the newly downsized cans.

7 58. Other collusive Packaged Tuna price increases followed. In furtherance of their  
8 continuing unlawful agreement or understanding not to compete on price, Defendants and their  
9 co-conspirators implemented collusive price increases on Packaged Tuna in 2008, 2010, 2011,  
10 and 2012. Additionally, in at least 2011, 2012 and 2013, they agreed to refrain from aggressive  
11 discounting and other promotional practices that would lower the price of Packaged Tuna sold.  
12 Further, in 2012, Defendants and their co-conspirators collectively agreed to restrict  
13 competition by agreeing not to market Packaged Tuna labeled as “FAD-Free” under their name  
14 brands, despite environmental and sustainability concerns regarding the use of FADs and  
15 increasing market demand for FAD-Free tuna. Upon information and belief, this agreement  
16 remained in effect at least until July 2015.

17 59. As explained below, the conspiracy was facilitated in part by the fact that during  
18 the Conspiracy Period, a number of senior sales and marketing executives and other employees  
19 left the employ of one tuna company to go work for another. This familiarity helped cultivate a  
20 culture of collusion in the Packaged Tuna industry and resulted in frequent communication by  
21 telephone between these senior sales and marketing executives for competitor companies. A  
22 select number of industry trade associations also facilitated the conspiracy by providing a  
23 pretext for executives and officers of the competitor companies to meet and conduct conspiracy  
24 business.

1           60.     Additionally, the use of a common vendor by StarKist, Bumble Bee, and COSI  
2 for their cans, Impress, and a co-packing arrangement between Bumble Bee and COSI also  
3 facilitated their collusion and enforcement of their cartel.

4           61.     As far back as 2004, Defendants and their co-conspirators affirmatively and  
5 fraudulently concealed their unlawful conduct and coordinated their messaging to their  
6 customers in order to create pretextual justifications for their collusive price increases. These  
7 pretextual explanations for their Packaged Tuna price increases were intended to create the  
8 illusion the market for the pricing and sale of Packaged Tuna in the United States was  
9 competitive when it was not.

10          62.     The conspiracy and collusion in the Packaged Tuna industry did not come to  
11 light until July 2015, when COSI's parent company, Thai Union, admitted publicly that the DOJ  
12 was investigating the packaged seafood industry in the United States. A criminal antitrust  
13 investigation into Defendants' price-fixing conspiracy appears to have grown out of the DOJ's  
14 routine merger review following Thai Union's announcement in 2014 of its bid to acquire  
15 Bumble Bee for \$1.5 billion.

16          63.     On July 23, 2015, Bumble Bee acknowledged receipt of a grand jury subpoena,  
17 stating, "The Company did receive a grand jury subpoena related to a US Department of Justice  
18 investigation into potential antitrust violations in the packaged seafood industry. The Company  
19 is cooperating fully with the investigation."

20          64.     On December 3, 2015, Thai Union and Bumble Bee announced that they had  
21 abandoned their proposed merger in the face of DOJ's criminal investigation. In a statement  
22 that same day, then assistant attorney general in charge of the DOJ's Antitrust Division, William  
23 Baer stated, "Our investigation convinced us—and the parties knew or should have known from  
24 the get go—that the market is not functioning competitively today, and further consolidation  
25 would only make things worse."

1           65.    The DOJ’s criminal investigation resulted in numerous guilty pleas for  
2 violations of federal antitrust laws and, in the case a Lischewski, a criminal conviction following  
3 a jury trial.

4           66.    On December 7, 2016, the DOJ filed a criminal information against Walter Scott  
5 Cameron, a Senior Vice President of Sales for Bumble Bee, and he pled guilty to the price-  
6 fixing charge on January 25, 2017.

7           67.    On December 21, 2016, the DOJ filed a criminal information against Kenneth  
8 Worsham, a Senior Vice President of Trade Marketing for Bumble Bee, and he pled guilty to  
9 the price-fixing charge on March 15, 2017.

10          68.    On May 30, 2017, the DOJ filed a criminal information against Stephen L.  
11 Hodge, a Senior Vice President for Sales for StarKist, and he pled guilty to the price-fixing  
12 charge on June 28, 2017.

13          69.    On May 8, 2017, Bumble Bee pled guilty pursuant to a plea agreement to the  
14 price-fixing conspiracy and judgment was entered on August 2, 2017. Bumble Bee agreed to a  
15 criminal fine of at least \$25 million.

16          70.    On November 14, 2018, StarKist pled guilty pursuant to a plea agreement to the  
17 price fixing conspiracy and judgment was entered on September 11, 2019. StarKist was ordered  
18 to pay a criminal fine of \$100 million—the statutory maximum.

19          71.    On May 16, 2018, Lischewski was indicted by a federal grand jury for  
20 knowingly entering into and engaging in a conspiracy to suppress and eliminate competition by  
21 fixing the prices for Packaged Tuna sold in the United States in violation of Section 1 of the  
22 Sherman Act. His case went to trial in November 2019, and following a four week trial on  
23 December 3, 2019, Lischewski was convicted for his participation in the conspiracy.

24          72.    Thus, many of the participants in the price-fixing conspiracy have admitted guilt  
25 and, in the case of Lischewski, been found guilty of participation in the conspiracy, confirming  
26 the existence of the conspiracy between Defendants and their co-conspirators.

1           **B. Overt Acts of Collusion**

2           73. Defendants and their co-conspirators carried out their continuing conspiracy  
3 regarding Packaged Tuna through in-person meetings and frequent communication. StarKist,  
4 Bumble Bee, and COSI participated together in anticompetitive communications, including  
5 telephone calls (sometimes multiple times a day), text messages, emails (often using private  
6 email accounts to avoid detection), and frequent face-to-face meetings at pre-arranged locations  
7 such as hotels and restaurants. In these meetings, emails, text messages and telephone calls,  
8 Defendants and their co-conspirators shared sensitive business and bid information, and entered  
9 into agreements to fix, raise, stabilize, and maintain prices of Packaged Tuna sold in the United  
10 States. Among other things, they agreed not to charge below a certain price, to coordinate price  
11 increases and announcements of increases, and increase prices by comparable amounts.

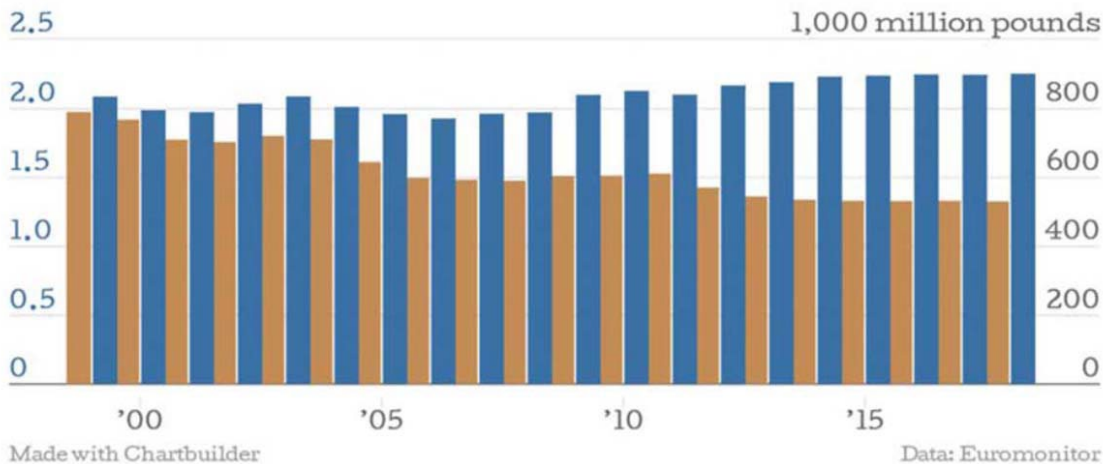
12           **C. Packaged Tuna Prices Increased as a Result of the Conspiracy**

13           74. Given the declining demand in the United States for Packaged Tuna and the  
14 increasingly abundant supply of canning-grade tuna, market forces should have put substantial  
15 pressure on Defendants to attain greater market share and increase production so as to garner  
16 economies of scale that would reduce the price of Packaged Tuna sold in the United States.  
17 Instead, because of the conspiracy, the opposite occurred.

18           75. During the Conspiracy Period, and as a result of the conspiracy, prices for  
19 Packaged Tuna sold to U.S. retailers increased or were otherwise above competitive levels  
20 while the tuna catch increased and U.S. demand for Packaged Tuna declined. Although per  
21 capita U.S. tuna consumption continued to decline after approximately 2004, the dollar amount  
22 spent on Packaged Tuna and other packaged seafood in the United States actually increased  
23 (Packaged Tuna accounts for approximately 75 percent of all canned seafood spending). The  
24 below chart illustrates the increased prices paid for lower quantities of canned seafood  
25 (expanding the analysis beyond tuna) by American purchasers:

Americans are buying less, but more expensive canned seafood

■ Volume sales ■ Dollar sales



76. Defendants and their co-conspirators’ pricing of Packaged Tuna sold in the United States is not consistent with expected pricing given the excess supply and production capacity coupled with declining U.S demand. To the contrary, during the Conspiracy Period, the prevailing market conditions in the U.S. Packaged Tuna industry would predict decreasing prices. Instead, as a result of the conspiracy, the prices paid by consumers for Packaged Tuna continued to increase.

77. The higher Packaged Tuna prices resulted in substantial profits for Defendants and their co-conspirators. Thai Union saw its net profit increase from \$61 million in 2008 to \$140 million in 2014. The following year, in its 2014 Annual Report issued in February 2015, Thai Union explained that “[d]espite minimal sales growth in the US, competitive inventory cost and reasonable market conditions helped lift the margin of our US brand.” While Thai Union attributed the increase to “more rational U.S. market competition,” the ‘more rational’ competition was not competition at all; it was collusion.

78. Bumble Bee has been similarly profitable due to the conspiracy. Lion Capital purchased Bumble Bee for \$980 million in 2010, and reached an agreement to sell it to Thai Union in 2014 for \$1.51 billion. In announcing the sale, Lion Capital noted that Bumble Bee’s

1 EBITDA in 2014 was a record breaking \$150 million, on revenue of \$1 billion. Kelly Mayer,  
2 in a memo to her partners at Lion Capital, attributed Bumble Bee’s record year to the growth of  
3 “gross margins through disciplined pricing actions.”

4 79. StarKist has the largest U.S. market share and thus Dongwon registered  
5 substantial additional income as a result of the price-fixing conspiracy and received the  
6 proceeds of the conspiracy from StarKist knowing the ill-gotten nature of funds.

7 80. In a Korean-language publication, Dongwon stated that “[t]he canned tuna  
8 market in the U.S. is approximately a \$1,700,000,000 USD market, but it is a mature market  
9 where growth has stopped, and it maintains an oligopolistic system with StarKist (40%),  
10 Bumble Bee (25%), and COSI (15%), and represents a structure in which the price of tuna  
11 cannot be efficiently reflected in the sales price of products.” Instead, during the Conspiracy  
12 Period, the price of Packaged Tuna reflected the conspiracy price.

13 **D. Collusive Price Increases in 2004-2006**

14 81. From 2001 through 2003, Packaged Tuna prices declined as did profit margins.  
15 Prices for Packaged Tuna in the U.S. were below the level needed to deliver the profits sought  
16 by Defendants and their co-conspirators.

17 82. During May 2004, COSI President Dennis Mussell was in close contact with  
18 Lischewski and with StarKist President and CEO, Don Binotto, as they worked together on  
19 presentations for a trade event, the Infofish World Tuna Conference, regarding the state of the  
20 U.S. tuna market. The Tuna Conference is a global industry event held every two years in  
21 Bangkok, Thailand attended by industry players and stakeholders from across the globe.

22 83. These executives also communicated regularly in 2004 about their planned  
23 reactions to new country-of-origin regulations that were soon to go into effect. The  
24 communications offered the competitors opportunities to discuss cooperation and collusion on  
25 Packaged Tuna pricing.

1           84.     In May 2004, COSI's CEO instructed his sales team to put out feelers to Bumble  
2 Bee and StarKist to determine whether there was support for a joint price increase on Packaged  
3 Tuna.

4           85.     Subsequently, Bumble Bee received a COSI internal price list. Bumble Bee's  
5 Vice President of Sales, Cameron, asked for a copy of the list by email or fax. Lischewski, who  
6 had the document, instead instructed his assistant to overnight the list to Cameron, stating "no  
7 faxes or emails" to which Cameron replied, "PARANOID!!!!"

8           86.     Defendants and their co-conspirators reached an agreement on a price increase  
9 and on June 1, 2004, in accordance with their unlawful agreement, StarKist announced a 10  
10 percent price increase on Packaged Tuna.

11          87.     Consistent with their agreement, COSI followed and on June 11, 2004,  
12 announced a net price increase effective in July 2004. Within days, Bumble Bee announced its  
13 own Packaged Tuna price increase as well, also effective in July 2004. These price increases  
14 delivered the first portion of the approximately 10 percent price increase on Packaged Tuna by  
15 StarKist, Bumble Bee, and COSI. For example, each company raised its net price for a case of  
16 light meat tuna above \$22.00.

17          88.     All three brands followed the net price increases with list price increases in late  
18 August or early September 2004. By September 2, 2004, StarKist, Bumble Bee, and COSI had  
19 collectively raised prices on light meat tuna by an additional \$2.00 per case. These price  
20 increases together established uniform pricing on both light meat and white meat tuna across  
21 all three brands.

22          89.     Defendants' 2004 collusive price increases were intended to and did increase  
23 U.S. Packaged Tuna prices, and these prices remained at supracompetitive levels throughout  
24 the Conspiracy Period.



1           90. In or about January 2006, Defendants and their co-conspirators reached  
2 agreement to execute another round of collusive price increases when rising albacore costs  
3 threatened to erode their supracompetitive profit margins.

4           91. StarKist again moved first, on January 30, 2006, with a six percent price increase  
5 on white meat (albacore) Packaged Tuna effective on May 1, 2006. However, StarKist needed  
6 Bumble Bee and COSI to go along with the price increase for it to hold.

7           92. On March 6, 2006, COSI followed suit and announced a price increase of  
8 approximately six percent on white meat Packaged Tuna. COSI raised prices on cases of solid  
9 white tuna in water to \$58.08 and on 24-packs of solid white tuna in oil to \$29.04, exactly  
10 matching the prices announced by StarKist.

11           93. On April 17, 2006, Bumble Bee in turn announced a price increase on white  
12 meat Packaged Tuna that matched the conspiratorial prices already announced by StarKist and  
13 COSI. The Bumble Bee and the COSI price increases both went into effect in the first week of  
14 July 2006.

15           94. As a result of the conspiracy, six-ounce chunk light tuna, at the time, one of the  
16 most popular Packaged Tuna products, which had gone as low as \$0.54 per can in the beginning  
17 of 2004, rose to \$0.58 by late 2004 and \$0.62 by August 2006. The 2004 and 2006 increases set  
18 a template for the ongoing exchange of non-public information and collusive, coordinated price  
19 increases.

20           **E. Collusive Package Size Reduction and Price Increases in 2007-2008**

21           95. The conspiracy among Defendants and their co-conspirators continued in 2007  
22 and 2008.

23           96. Between roughly 2000 and 2007, leading tuna companies, including Defendants,  
24 followed each other in a series of gradual moves to change the size of the standard can of  
25 Packaged Tuna, first from seven ounces to six and a half ounces, then to six and one-eighth  
26

1 ounces, and then to six ounces. These changes occurred gradually over at least an eight-year  
2 period.

3 97. In 2007, StarKist abruptly decided to change the size of its standard six-ounce  
4 tuna can to five ounces, marking a major departure from the gradual changes of the previous  
5 decade.

6 98. The collusive can-size reduction was facilitated by co-conspirator, Impress, the  
7 then-owner of the can manufacturing plant in American Samoa that supplied cans to StarKist,  
8 Bumble Bee, and COSI (in 2015, the plant was sold to Dongwon). Contacts at Impress  
9 communicated StarKist's plans to downsize and StarKist's hope that COSI and Bumble Bee  
10 would agree to do the same.

11 99. StarKist needed COSI and Bumble Bee to agree to the downsizing in packaging  
12 because any company that downsized their packages unilaterally would have faced fierce  
13 customer backlash and loss of market share. Retailers and purchasers would simply shift to  
14 buying the still-6-ounce cans from its competitors, instead of StarKist's five-ounce cans.

15 100. Defendants and their co-conspirators knew at the time that Impress was sharing  
16 production and other information about each of them with the others, and used Impress as a  
17 conduit to facilitate the exchange of information during the conspiracy.

18 101. Through a series of telephone and email communication, and at least one in  
19 person meeting in March 2008, StarKist, Bumble Bee and COSI reached agreement to reduce  
20 their standard can size from six ounces to five ounces.

21 102. Attendees at the March 2008 meeting at a restaurant outside San Diego,  
22 California, included Lischewski; Doug Hines, the COO of Bumble Bee; Shue Wing Chan, the  
23 CEO of COSI; and John Sawyer, COSI's head of sales and marketing.

24 103. Defendants and their co-conspirators also agreed to coordinate their messaging  
25 regarding the downsizing to prevent customers from learning the decision was not driven by  
26 necessity, but instead the result of their collusion.

1           104. In July 2008, when Del Monte was selling StarKist to Dongwon, Del Monte  
2 informed Dongwon that Bumble Bee and COSI were implementing the can downsizing as well  
3 and gave Dongwon detailed information about each competitor's timetable for the can  
4 downsizing. Dongwon approved of the conspiratorial agreement and agreed with the plan to  
5 reduce the size of cans intended for sale in the United States to five ounces.

6           105. Beginning on or about July 21, 2008, Bumble Bee, COSI, and StarKist began  
7 distributing five-ounce cans of Packaged Tuna to replace their six-ounce cans as well as smaller  
8 servings of Packaged Tuna in pouch form. The downsizing was largely completed in 2009 and,  
9 in effect, increased the price per ounce of Packaged Tuna since the downsizing was not  
10 accompanied by a decrease in price.

11           106. The size change increased the price per ounce of Packaged Tuna by 20 percent.  
12 In addition, as detailed below, by the time the downsizing was announced, Defendants and their  
13 co-conspirators were colluding on another list price increase.

14           107. This effective price increase was justified by pretextual statements about  
15 sustainability. For example, in August 2008, StarKist said the downsizing was done primarily  
16 for environmental reasons including "sav[ing] two million gallons for water a year, while only  
17 taking out two teaspoons of tuna from each can."

18           108. A size reduction with a proportional cost reduction would have offered  
19 consumers a lower out-of-pocket price for a smaller package at the same net price, effectively  
20 operating as a discount and undercutting the competitors for market share. Instead, there was  
21 again cooperation on pricing by all three, with a uniform 20 percent increase on the per-ounce  
22 price of Packaged Tuna across all three brands.

23           **F. Collusive Price Increases in 2008**

24           109. Not content with making customers pay the same amount for a smaller package  
25 of tuna, Defendants also colluded to raise list prices for Packaged Tuna in 2008.

1           110. John Sawyer and Mike White of COSI reached out to their counterparts at  
2 Bumble Bee and StarKist to coordinate and confirm plans to raise list prices on Packaged Tuna.  
3 Mike White had previously worked with and was friends with Kenneth Worsham of Bumble  
4 Bee, the son of Bob Worsham of StarKist.

5           111. Defendants and their co-conspirators coordinated via telephone calls, email, and  
6 other communication, reaching agreement on the timing and magnitude of list price increases  
7 for Packaged Tuna in 2008.

8           112. StarKist, Bumble Bee, and COSI all issued list price increases in the third quarter  
9 of 2008, which were nearly identical for various types of Packaged Tuna. On June 17, 2008,  
10 StarKist issued a list price increase effective July 21, 2008. Bumble Bee followed suit with a  
11 list price increase issued on June 27, 2008, effective September 29, 2008. Then COSI issued a  
12 list price increase on July 3, 2008, effective September 1, 2008.

13           113. As part of this price increase, all three companies agreed to put customers on  
14 allocation, meaning they would not sell to customers at a volume that exceeded the retailer's  
15 historical volume, which helped ensure that customers did not load up on six-ounce cans while  
16 they were still available and blunt the impact of the collusive price increase and package  
17 downsizing. Starting at least with the collusion on can sizes, StarKist, Bumble Bee, and COSI  
18 implemented their allocation policies as a means of increasing the effectiveness of the  
19 conspiracy.

20           114. In October 2008, Dongwon's headquarters sought to ensure that all customers  
21 were being charged the increased prices for Packaged Tuna and were assured by employees and  
22 executives for Defendants and their co-conspirators that there were no exceptions.

23           115. A 2009 email from within Bumble Bee, which stated recipients should "read and  
24 delete," indicated executives at Dongwon were overall pleased with the way things were going.  
25 The email came in the wake of several near-simultaneous price increases jointly discussed by  
26 executives at StarKist, COSI, Bumble Bee, and their parent companies.

1           **G. Collusive Price Increases in 2010**

2           116. Defendants continued to conspire in 2010, when they once again collusively  
3 raised net prices on Packaged Tuna. Net prices are the prices disseminated to brokers and  
4 represent the list price less promotional allowances offered by the brands to reduce the list price.  
5 (Brokers present these prices to retailers, who pay StarKist, Bumble Bee and COSI directly for  
6 the product).

7           117. Defendants and their co-conspirators coordinated via telephone calls, email, and  
8 other communication, reaching agreement on net price increases for Packaged Tuna in the third  
9 quarter of 2010. Their communication also included in-person meetings while in New York for  
10 an NFI meeting.

11           118. StarKist's May 2010 price increase announcement was shared with Bumble Bee  
12 and COSI. StarKist announced the price increase first and then in accordance with their  
13 unlawful agreement, COSI and Bumble Bee followed suit.

14           119. StarKist announced its price increase on May 3, 2010, effective August 2010.  
15 COSI followed, announcing its price increase on May 14, 2010, also effective August 2010,  
16 and shortly thereafter, Bumble Bee announced a nearly identical increase on May 21, 2010,  
17 effective in August 2010. Across all three brands, the net price increases were essentially  
18 identical on a per unit basis.

19           120. Each company issues letters that accompanied their price increases and  
20 pretextually blamed fishing restrictions for the higher prices.

21           **H. Collusive Price Increases in 2011**

22           121. Defendants continued to collude on price increases for Packaged Tuna in 2011.  
23 Even with the alteration in can size for Packaged Tuna and the prior collusive price increases,  
24 Defendants and co-conspirators were still unhappy with the prices they obtained. Lischewski  
25 complained in April 2011 that Packaged Tuna was "too cheap." He said that it was important  
26 to persuade customers to pay more for tuna. Unable to achieve this through lawful measures,

1 Defendants and their co-conspirators continued to meet, communicate and collude to raise  
2 prices on Packaged Tuna sold in the United States.

3 122. During the second quarter of 2011, StarKist sought to take a list price increase  
4 and discussed with COSI and Bumble Bee whether they would follow suit, which they agreed  
5 to do.

6 123. Lischewski had instructed Cameron and Worsham to reach agreement with their  
7 counterparts at StarKist to implement a list-price increase. He first directed Cameron to reach  
8 out to Handford at StarKist and find what StarKist planned to do. Cameron and Worsham had  
9 frequent conversations with Handford between late February and early March 2011, during  
10 which they ultimately agreed they would issue a list price increase, reaching agreement on both  
11 timing and amounts of the price increase.

12 124. Defendants and their co-conspirators again engaged in a series of frequent  
13 telephone calls and other communication in furtherance of the price increase conspiracy,  
14 including frequent calls among Mike White and John Sawyer of COSI with Kenneth Worsham,  
15 Walter Scott Cameron, and Don George of Bumble Bee, and with Charles Hanford and Stephen  
16 Hodge of Starkist.

17 125. StarKist announced its list price increases on March 2, 2011, with an effective  
18 date of May 30, 2011. Bumble Bee followed, announcing its list price increases on March 10,  
19 to take effect on May 29, 2011. COSI then announced a net price increase on May 17, 2011,  
20 effective June 1, 2011.

21 126. COSI's net price increase, based on a comparison of net to list prices, was  
22 proportional to the list price increases by StarKist and Bumble Bee, consistent with the parties'  
23 collusive agreement reached during their conspiracy communications.

24 127. As a result of the collusive price increases, Defendants and their co-conspirators  
25 imposed supracompetitive pricing on customers.

1           **I. Collusive Price Increases in 2012**

2           128. The conspiracy among Defendants and their co-conspirators continued into  
3 2012. In late 2011 and early 2012, Defendants and their co-conspirators began discussing  
4 another coordinated list price increase for second quarter 2012. In December 2011 and January  
5 2012, frequent telephone conversations occurred between senior executives and sales personnel  
6 of StarKist, Bumble Bee, and COSI about coordinating and announcing a price increase for a  
7 number of products in the second quarter of 2012.

8           129. Their discussions led to an agreement they would all increase prices on Packaged  
9 Tuna by nearly identical amounts. Pursuant to their agreement, StarKist, Bumble Bee, and COSI  
10 announced collusive price increases as follows: StarKist announced its increase on January 13,  
11 2012, effective March 26, 2012; Bumble Bee announced its increase on January 17, 2012,  
12 effective April 1, 2012; and COSI announced its increase on January 18, 2012, effective April  
13 1, 2012.

14           130. Each price increase announced virtually identical increases on a number of  
15 products. For example, a 48 pack of five ounce cans of chunk light tuna in water increased from  
16 \$40.80 to \$43.68. Other products also increased by identical percentages. The price increases  
17 were substantially identical for the cartel participants' corresponding products.

18           131. These contemporaneous announcements of list price increases for Packaged  
19 Tuna occurred at a time when consumer demand continued to weaken in the U.S., a practice  
20 lacking any legitimate independent business reasons in an otherwise competitive market. In  
21 order to conceal the conspiracy, Defendants and their co-conspirators gave pretextual  
22 justifications in their price announcement letters to customers, pointing to the rising input costs  
23 for fish, packaging, and transportation.

24           132. The series of price increases planned and executed by Defendants and their co-  
25 conspirators collusively set a benchmark that affected all subsequent Packaged Tuna list prices,  
26 causing the prices to consumers to be artificially high long after the last over acts of conspiracy.

1           **J. Collusion on Reducing Promotions in at Least 2011-2013**

2           133. To ensure their collusive Packaged Tuna price increases would not erode,  
3 Defendants and their co-conspirators also agreed to limit promotions on Packaged Tuna  
4 products. They engaged in monitoring of each other's discounts and promotions and policed  
5 one another to ensure no brand discounted too aggressively to erode the gains of their  
6 supracompetative prices. By exchanging such information among high-level executives, the  
7 competitors were able to police whether each remained faithful to their overarching conspiracy.

8           134. Between at least November 2011 and June 2013, senior executives and sales  
9 personnel at StarKist, Bumble Bee and COSI exchanged e-mails and had telephone  
10 conversations about discounting and promotional practices and terms for the sale of Packaged  
11 Tuna to customers. As part of these e-mails and telephone conversations, these senior  
12 executives and sales personnel of Defendants assured each other that they would not compete  
13 regarding the pricing and sale of canned tuna sold to customers and shared copies of  
14 confidential, internal documents to prove they were abiding by the terms of their agreement.

15           135. In addition to their telephone and email communication, there was at least one  
16 in person meeting in Chicago, Illinois, under the auspices of an NFI meeting, in which their  
17 agreement and understandings on refraining from promotional pricing were discussed.

18           **K. Collusion on Refusal to Offer FAD-Free Products**

19           136. For years, the Packaged Tuna industry has been facing increasing pressure to  
20 monitor their fish suppliers for unsustainable fishing practices, including overfishing. During  
21 2011, the industry experienced increasing pressure to provide consumers the option to purchase  
22 more sustainably fished products.

23           137. A particular focus was the use of FADs, which have drawn criticism on  
24 environmental sustainability grounds. By drawing large groups of fish together in one place to  
25 facilitate their mass capture, FAD use results in greater "bycatch" – dolphins, sea turtles, and  
26



1 other marine life caught and often killed as a result of tuna fishing – than tuna caught by other  
2 means.

3 138. Despite there being a market for it, the three major brands had not introduced a  
4 product under their labels marketed as “FAD-Free” or “Pole and Line Only.” They were worried  
5 about public denouncement and a risk that consumers might demand FAD-free or P&L-only  
6 tuna in the same way consumers began demanding “dolphin-safe” tuna in the mid-1990s.

7 139. In 2011, employees and representatives of StarKist, Bumble Bee, and COSI  
8 discussed whether any of them would launch a “FAD-Free” product (i.e., a product containing  
9 only tuna caught without the use of a FAD device). These discussions included e-mails that  
10 occurred throughout 2011 and into 2012.

11 140. StarKist, Bumble Bee, and COSI came to believe that if any one of them  
12 launched a FAD-Free product under one of their own branded labels, it would work to the  
13 detriment of each of their companies.

14 141. On February 10, 2012, Safeway announced its decision to eliminate FAD-caught  
15 tuna in favor of tuna caught using “free-school purse-seine methods.”

16 142. Each brand had an individual interest in offering consumers FAD-free Packaged  
17 Tuna. But in February 2012, StarKist, Bumble Bee and COSI continued their conspiracy not to  
18 compete by agreeing that they would not sell any “FAD-Free” or “P&L Only” products under  
19 their own labels, despite strong and growing demand by consumers for FAD-free products.

20 143. Senior executives at StarKist, Bumble Bee and COSI began discussions in e-  
21 mails on this topic in late 2011, and reached agreement in a telephone conference among all  
22 three companies in February 2012. During the conference call, executives from StarKist,  
23 Bumble Bee, and COSI agreed that none of them would launch a branded FAD-free Packaged  
24 Tuna product in the United States. This agreement was later confirmed in writing during the  
25 week of February 17, 2012. They agreed not to sell FAD-free Packaged Tuna products under  
26 their own brand names to avoid competition in Packaged Tuna market in the United States.

1           144. Defendants’ agreement not to compete by producing branded Packaged Tuna  
2 labeled “FAD-Free” ensured that FAD-free tuna, which would be costlier to produce and have  
3 a lower profit margin, did not cannibalize sales of their Packaged Tuna products subject to the  
4 price-fixing conspiracy.

5           145. The FAD-free agreement assisted Defendants and their co-conspirators in  
6 maintaining their price-fixing conspiracy and staving off inter-brand competition in offering  
7 FAD-free Packaged Tuna to consumers as a more environmentally sustainable and desirable  
8 alternative. The agreement protected their collusive price increases by preventing competition  
9 between their Packaged Tuna products. By ensuring that the dominant brands in the market  
10 remained largely commoditized, Defendants and their co-conspirators facilitated their price-  
11 fixing conspiracy and reduced competition.

12           **L. Policing Conspirators’ Behavior to Maintain Participation in the Price-  
13 Fixing Conspiracy**

14           146. During the Conspiracy Period, senior executives and management for  
15 Defendants and their co-conspirators engaged in activities to confirm that the all parties to the  
16 conspiracy adhered to the agreement to raise and maintain inflated Packaged Tuna prices.

17           147. Defendants and their co-conspirators policed each other’s behavior by directly  
18 communicating with one another via telephone, email, and in person about tuna pricing to make  
19 sure they each maintained the agreed-upon supracompetitive prices for Packaged Tuna.

20           148. For example, in May 2012, Worsham of Bumble Bee and Hodge of StarKist met  
21 for dinner at a restaurant in La Jolla, California and Hodge gave Worsham a thumb drive with  
22 Starkist pricing data, confidential and competitive information confirming Starkist had followed  
23 through on the agreement to raise list process for Packaged Tuna. Worsham subsequently gave  
24 the StarKist pricing data to Lischewski.

1 149. Worsham testified during Lischewski's trial that he would typically review  
2 information with Lischewski as soon as he had access, particularly in a case where he had solid  
3 competitive information such as the pricing data from StarKist.

4 150. Defendants and their co-conspirators also followed advertising for each other's  
5 product and policed to make sure no conspirators were discounting too aggressively, emailing  
6 each other with copies of advertisements to ensure compliance with their conspiratorial  
7 agreements.

8 **M. The Conspiracy Was Effective**

9 151. The price-fixing conspiracy by Defendants and their co-conspirators was  
10 effective in increasing Packaged Tuna prices above a competitive level and forcing consumers  
11 to pay supracompetitive prices.

12 152. For example, and without limitation, Lischewski observed in 2012 that canned  
13 tuna prices had increased more than 40 percent in eighteen months during 2011 and 2012.

14 153. Defendants and their co-conspirators' collusive manipulation of the net prices  
15 and list prices for Packaged Tuna had an adverse effect on the prices consumers paid.

16 154. Defendants and their co-conspirators agreed on the timing and amount of  
17 Packaged Tuna price increases as reflected in their price announcements. They were successful  
18 in achieving these price increases, which enabled them to impose supracompetitive prices on  
19 consumer in the United States and Washington. This was because Defendants and their co-  
20 conspirators knew during the conspiracy that all of them were increasing Packaged Tuna prices  
21 (or offering the same or similar prices); and the announced price increases were higher than  
22 would have occurred if, in the absence of the conspiracy, each company had competed and  
23 independently and unilaterally crafted its own price increase announcements.

24 //

25 //

26 //

1           **N. Defendants’ Packaged Tuna Pricing Was Against Their Self-Interest but**  
2           **For Their Collusion**

3           155. During the Conspiracy Period, the market for the production and sale of  
4 Packaged Tuna was concentrated in a very few competitors: StarKist, Bumble Bee, and COSI.  
5 However, none of these companies had the power, unilaterally, to profitably increase the price  
6 of Packaged Tuna sold in the United States, and instead needed to maintain a unified front in  
7 order to increase prices to the highly profitable levels that existed during the conspiracy.  
8 Because their Packaged Tuna products were close substitutes, unilateral attempts by any one of  
9 the companies to manipulate Packaged Tuna price or supply posed substantial commercial risks.  
10 A unilateral increase in price not followed by the others would simply lead to lost sales and lost  
11 market share. A unilateral reduction in production would be costly because market share would  
12 be lost and revenue would likely fall while fixed costs (e.g., labor, distribution, overhead,  
13 facility operation facility maintenance, etc.) would remain relatively the same. Thus,  
14 Defendants and their co-conspirators’ Packaged Tuna price increases during the Conspiracy  
15 Period would have been against their self-interest but for their collusive agreement to all  
16 virtually identically raise prices.

17           **VII. DEPARTMENT OF JUSTICE INVESTIGATION**

18           **A. The Department of Justice Investigates and Numerous Conspirators Plead**  
19           **Guilty Including StarKist and Bumble Bee**

20           156. In July 2015, published reports revealed that the San Francisco office of the  
21 DOJ’s Antitrust Division had convened a grand jury to investigate potential antitrust violations  
22 by companies in the market for the production, pricing, and/or sale of packaged seafood  
23 products, including Packaged Tuna.

24           157. The criminal antitrust investigation appears to have begun following Thai  
25 Union’s 2014 announcement of its intention to acquire Bumble Bee for \$1.5 billion. On July  
26 17, 2015, Thai Union announced its suspension of a planned public stock offering intended to

1 finance its acquisition of Bumble Bee, stating it wanted “additional clarity” on the DOJ  
2 investigation. It later announced it would not go proceed with the acquisition of Bumble Bee.

3 158. On September 11, 2017, Thai Union admitted that its U.S. subsidiary, COSI,  
4 was the whistleblower in DOJ’s investigation of the price fixing conspiracy, telling the Stock  
5 Exchange of Thailand that COSI had received conditional leniency under the DOJ’s Corporate  
6 Leniency Program. Participation in that program requires an admission of guilt, thus COSI has  
7 admitted its participation in the conspiracy.

8 159. The DOJ investigation ultimately resulted in a series of guilty pleas—Bumble  
9 Bee, Starkist, and executives Cameron, Hodge, and Worsham—and the criminal conviction of  
10 Lischewski. Bumble Bee plead guilty in August 2017 and agreed to a \$25 million criminal fine.  
11 StarKist pled guilty in September 2019 and the statutory maximum \$100 million criminal fine  
12 was imposed. Additionally, senior executives Cameron, Hodge, and Worsham all pled guilty to  
13 charges of criminal price fixing.

14 160. The plea agreements for Cameron, Worsham, and Hodge all state they  
15 “participated in a conspiracy with other persons and entities engaged in the manufacture and  
16 sale of packaged seafood, the primary purpose of which was to fix, raise and maintain the prices  
17 of packaged seafood sold in the United States.” In furtherance of that conspiracy, they “engaged  
18 in conversations and discussions and attended meetings with representatives of other major  
19 packaged-seafood-producing firms. During these conversations, discussions and meetings,  
20 agreements and mutual understandings were reached to fix, raise and maintain the prices of  
21 packaged seafood sold in the United States.”

22 161. Bumble Bee’s and StarKist’s plea agreements similarly each provide, “the  
23 defendant, through its officers and employees, including high-level personnel of the defendant,  
24 participated in a conspiracy among major packaged-seafood-producing firms, the primary  
25 purpose of which was to fix, raise, and maintain the prices of packaged seafood sold in the  
26 United States.” The agreements likewise state that in furtherance of the conspiracy, Bumble

1 Bee and StarKist, through their officers and employees, “engaged in conversations and  
2 discussions and attended meetings with representatives of other major packaged-seafood-  
3 producing firms. During these conversations, discussions, and meetings, agreements and mutual  
4 understandings were reached to fix, raise, and maintain the prices of packaged seafood sold in  
5 the United States. Defendant, through its officers and employees, negotiated prices with  
6 customers and issued price announcements for packaged seafood in accordance with the  
7 agreements and mutual understandings reached.”

8 162. The “relevant period” in Bumble Bee’s plea agreement is “that period beginning  
9 at least as early as the first quarter of 2011 and continuing through at least as late as the fourth  
10 quarter of 2013.” During that period, Bumble Bee’s sales of Packaged Tuna affecting U.S.  
11 customers totaled at least \$567.7 million per its plea agreement.

12 163. The “relevant period” for StarKist’s plea agreement is “that period beginning at  
13 least as early as November 2011 and continuing through at least as late as December 2013.”  
14 During that period, StarKist’s sales of Packaged Tuna affecting U.S. customers totaled at least  
15 \$600 million per its plea agreement.

16 164. In the joint sentencing statement filed by StarKist and the government in its  
17 criminal case, the government stated it had “concerns that, while aware of the criminal  
18 investigation, StarKist has converted liquid assets to an illiquid form and transferred assets to  
19 its parent,” noting that in 2016, “after becoming aware of the criminal investigation and civil  
20 claims against it, StarKist issued a \$20 million dividend to its parent, Dongwon Industries.”

21 165. When StarKist’s guilty plea was announced, StarKist President and CEO  
22 Andrew Choe said in a statement that the company “accepts responsibility” and has cooperated  
23 with the Department of Justice throughout the investigation.

24 **B. Lischewski Convicted of Price-Fixing**

25 166. Lischewski was indicted on May 16, 2018 for knowingly engaging in the price  
26 fixing conspiracy from at least as early as November 2010 and continuing through at least

1 December 2013. Following a four-week trial in the U.S. District Court for the Northern District  
2 of California in San Francisco, he was found guilty of one count of price-fixing. The jury's  
3 special verdict form found that both StarKist and COSI participated in the conspiracy with  
4 Lischewski.

5 167. The trial featured hundreds of exhibits and testimony from ten witnesses,  
6 including senior executives at each of the major three packaged-seafood companies, StarKist,  
7 Bumble Bee, and COSI.

8 168. According to evidence presented at trial, Lischewski was a principle participant  
9 in the price-fixing conspiracy, affecting hundreds of millions of dollars in sales throughout the  
10 United States. He authorized and supervised his subordinates' participation in the conspiracy.  
11 He and his co-conspirators employed measures to conceal their conspiratorial conduct,  
12 including meeting at offsite locations, using third-party e-mail addresses, and discouraging  
13 retention of documents concerning the conspiracy. They choreographed price increases on  
14 hundreds of millions of cans of Packaged Tuna sold annually.

15 169. The trial included testimony from former COSI CEO Shue Wing Chan and  
16 Renato Curto, the former president and CEO of Bumble Bee tuna supplier Tri Marine, as well  
17 as Lischewski's former employees, Kenneth Worsham and Walter Scott Cameron, who both  
18 testified under oath that Lischewski had directed the conspiracy. They testified Lischewski gave  
19 a "very clear, direct order" to fix tuna prices.

20 170. COSI CEO Shue Wing Chan testified that he and Lischewski had a mutual  
21 agreement not to price aggressively and Chan told the jury outright that he entered into a price-  
22 fixing agreement with Lischewski.

23 171. Evidence demonstrated Lischewski personally spoke or met with COSI  
24 President Dennis Mussell, CEO John Signorino and later Shue Wing Chan, who took over as  
25 president and CEO in November 2007. Lischewski also had conversations with Dongwon  
26 Chairman Jae-Chul Kim after Dongwon acquired Starkist from Del Monte in 2008.

1 172. As President and CEO, Lischewski approved all list-price increases and changes  
2 to pricing guidance issued during the conspiracy. He directly supervised Cameron and  
3 Worsham in their employment and in their participation in the price-fixing conspiracy.

4 173. Lischewski's subordinate, Cameron, regularly shared Bumble Bee's future  
5 pricing and customer information with the leadership of COSI and StarKist. From October 2009  
6 to September 2012, Cameron regularly communicated with his friend and former Bumble Bee  
7 coworker, Chuck Handford, who in 2010 was working for Starkist, about future pricing and  
8 customer information, sometimes several times per day. Cameron testified that Lischewski  
9 directed him to reach out to Hanford, at StarKist, to broker a "truce" between their "price wars"  
10 of aggressive competition during the 2010 period.

11 174. Stephen Hodge, of Starkist, testified that he regularly communicated with  
12 Bumble Bee's Ken Worsham, sometimes directly and sometimes through Ken Worsham's  
13 father, longtime StarKist sales executive Bob Worsham, who passed away in 2018.

14 175. After Hodge assumed the vice president role in May 2010 from departing  
15 executive Joseph Tuza, Tuza told Hodge one of his duties would be to stay engaged with his  
16 competitors on pricing. Per Hodge's testimony, "We were in Joe's office and he said to me:  
17 'You know that we have conversations with our competitors with regards to certain pricing  
18 activities. Now that I'm leaving and Chuck [Handford] is gone, that's going to be your  
19 responsibility.'" Tuza gave Hodge contact information for Cameron of Bumble Bee and John  
20 Sawyer of COSI.

21 176. Hodge and Worsham spoke frequently. They agreed to refrain from "10 for \$10"  
22 promotions on canned albacore prices in favor of promotions at a higher price point, exchanged  
23 internal company documents to confirm their participation in their elicited agreements, and  
24 coordinated on setting list prices.

25 177. For example, Hodge offered testimony describing reaching list price increases  
26 with Ken Worsham and Bob Worsham in 2011 and 2012. Hodge sent Bob Worsham a



1 spreadsheet with StarKist's prices for him to share with his son, Ken Worsham, who would give  
2 feedback about Bumble Bee's prices. Days later, Bob Worsham called Hodge back and said  
3 "pick up a pen" and proceeded to give him item by item pricing information that Hodge would  
4 input into a spreadsheet. "He just listed them off. There was no conversation back and forth.  
5 There was a list of any that were different than what I'd given him and I would write them  
6 down," Hodge testified.

7 178. Hodge described a series of telephone calls on December 12, 2011, between  
8 Hodge and the Worsham's as the companies were determining their list price increases.  
9 Following their communication, in January 2012, StarKist and Bumble Bee both announced list  
10 price increases on cases of five-ounce cans of chunk light tuna to \$43.68, identical amounts.  
11 COSI also increased its own list price increase in January 2012 to the same amount.

12 179. Worsham testified that he would typically review competitor information he  
13 received with Lischewski as soon as he had access, particularly in a case where he had solid  
14 competitive information such as the StarKist price spreadsheet referenced above.

15 180. According to an August 8, 2012 email from Tri-Marine CEO Curto, offered as  
16 an exhibit at the trial, Lischewski had told Curto his sales team and the competition were  
17 "talking constantly" and had been in "good communication about how to go to market  
18 intelligently."

19 181. After first offering conflicting testimony, Lischewski eventually admitted to the  
20 jury that he "occasionally" received nonpublic information from competitors and "may have"  
21 asked his employees to gather it.

22 182. At trial, the government asserted Lischewski had a number of motives for  
23 spearheading the price-fixing conspiracy. He was under pressure from Bumble Bee's parent  
24 group, Lion Capital, which demanded he deliver \$140 million in earnings to justify Lion's price  
25 for acquiring Bumble Bee. He also had an ownership interest in tuna fishing boats managed by  
26 the South Pacific Tuna Corporation (SOPAC), "quintessential motive evidence" since he stood

1 to gain from his SOPAC ownership interest when the price of raw fish increased. Additionally,  
2 by raising Packaged Tuna prices, he stood to personally gain from his Bumble Bee executive  
3 compensation, which included bonuses tied to the company’s financial performance. He was  
4 the largest individual shareholder of Bumble Bee—both as to the Class B units invested by  
5 management and the Class C management incentive units, owning 25 percent of the latter. Thus,  
6 the price-fixing conspiracy allowed Lischewski to capture profit from high prices on both sides  
7 of the market.

8 183. On December 3, 2019, after deliberating for 30 minutes, the jury returned a  
9 guilty verdict, convicting Lischewski of knowingly participating in a conspiracy to fix prices of  
10 Packaged Tuna from at least as early as November 2010 and continuing through at least as late  
11 as December 2013. He is currently scheduled for sentencing in June 2020.

## 12 **VIII. THE PACKAGED TUNA MARKET WAS CONDUCTIVE TO** 13 **CARTELIZATION**

### 14 **A. There Are No Close Substitutes for Packaged Tuna**

15 184. Packaged Tuna includes both “white” tuna, which consists of albacore tuna, and  
16 “light” tuna, which consists primarily of skipjack tuna. Both varieties of Packaged Tuna are  
17 typically packed in either water or vegetable oil. Light tuna accounts for approximately two  
18 thirds of total sales in the United States by volume.

19 185. Packaged Tuna possesses commodity-like characteristics in that the product of  
20 one seller is interchangeable with the product of another. As such, all things being equal, it  
21 would not be profitable for one seller to unilaterally increase Packaged Tuna prices in the U.S.,  
22 because a unilateral price increase by any one company would allow another company to gain  
23 substantial market share by simply holding its price.

1           **B.     The Packaged Tuna Market Is Concentrated**

2           186. Over the past two decades, the Packaged Tuna industry has undergone a high  
3 degree of consolidation. As a result of this consolidation, and during the Conspiracy Period, the  
4 U.S. Packaged Tuna industry had become highly concentrated.

5           187. During the Conspiracy Period, the market for the production of Packaged Tuna  
6 was dominated by Defendants and their co-conspirators. But for the conspiracy, Defendants and  
7 their co-conspirators would have had to compete on price. Although estimates of their  
8 respective market shares vary somewhat, StarKist's, Bumble Bee's and COSI's branded  
9 products account for approximately 80 percent of the U.S. Packaged Tuna market. Also, COSI,  
10 which has the smallest domestic market share of the three for branded Packaged Tuna, is the  
11 largest supplier of private-label Packaged Tuna in the United States. Combined, StarKist,  
12 Bumble Bee, and COSI processed at least 85 percent of all Packaged Tuna sold in the United  
13 States. Today, U.S. Packaged Tuna sales come to more than \$1.7 billion a year.

14           **C.     Barriers to Market Entry**

15           188. Numerous barriers to entry into the market for the production and sale of  
16 Packaged Tuna in the United States stifled competition and enabled the conspiracy by  
17 Defendants and their co-conspirators.

18           189. New entrants faced substantial start-up costs including the need to gain access  
19 to distribution channels and retail outlets. Additionally, substantial manufacturing expertise was  
20 required to enter the U.S. market. These startup costs reduced the opportunity or ability for  
21 rivals to enter the U.S. market and undercut the conspiracy's supracompetitive pricing.

22           190. New entrants and existing market participants faced substantial upfront,  
23 industry-specific costs to build a plant to process tuna loins into Packaged Tuna. For example,  
24 the cost for Tri-Marine simply to modernize the plant it acquired from COSI in 2010 in Pago  
25 Pago, American Samoa was approximately \$70 million and the plant did not reopen until  
26 approximately 2015.

1           191. The method used for processing Packaged Tuna in the United States was capital  
2 intensive. Given the cost to Tri-Marine of modernizing COSI's Pago Pago plant, the purchase  
3 of real estate and the construction of a new Packaged Tuna processing facility in the mainland  
4 United States would likely cost in excess \$70 million, and require substantial industry expertise  
5 to build and operate.

6           192. Restrictive tariffs of between approximately 6 percent and 35 percent on the  
7 importation of Packaged Tuna into the United States impaired the ability of foreign suppliers  
8 from capitalizing on supracompetitive domestic pricing of Packaged Tuna.

9           **D. Prevailing Supply and Demand Factors Incentivized Collusion**

10           193. Defendants and their co-conspirators faced supply and demand factors that  
11 should have led to declining prices for Packaged Tuna in the United States during the  
12 Conspiracy Period. The declining consumption of Packaged Tuna in the United States resulted  
13 in excess production capacity. In 2003, Defendants and their co-conspirators had sufficient  
14 production capacity to supply consumers in the United States with 3.4 pounds per capita of  
15 Packaged Tuna. However, by 2009, annual consumption had fallen to 2.5 pounds per capita (it  
16 would fall to just over 2 pounds per capita by 2016). Thus, a significant portion of their  
17 production capacity went unused.

18           194. In addition to the excess production capacity resulting from declining demand,  
19 Defendants and their co-conspirators also took steps to increase their own efficiency and  
20 production capacity. For example, COSI's Lyons, Georgia plant, which opened in 2009, had  
21 production capacity approximately 50 percent higher than the production capacity of the Pago  
22 Pago plant it displaced (the one reopened by Tri-Marine in 2015). When Dongwon purchased  
23 StarKist in 2008, it transferred equipment and technology that increased the manufacturing  
24 capacity of StarKist's plant in American Samoa.

1           195. Accordingly, the expanding global supply of canning-grade tuna coupled with  
2 declining demand for Packaged Tuna and the excess domestic production capacity controlled  
3 by Defendants and their co-conspirators left the Packaged Tuna industry ripe for collusion.

4           **E. The Transfer of Executives Facilitated Collusion**

5           196. During the Conspiracy Period, it was commonplace for executives of one  
6 defendant to accept a new job and become executives at their former competitors. Within the  
7 past 20 years, numerous individuals have held executive or senior sales and marketing positions  
8 for more than one company (while maintaining close interlocking relations with former  
9 colleagues), including, but not limited to:

- 10           ▪ Chris Lischewski: Vice President of Procurement at StarKist from 1991 to 1998,  
11           President and CEO of Bumble Bee from 1999 to 2018;
- 12           ▪ Jan Tharp: Senior Vice President of Supply Chain at StarKist from December  
13           2008 to July 2010, Senior Vice President of Operations at Bumble Bee from July  
14           2010 to September 2012, Executive Vice President/COO at Bumble Bee from  
15           September 2012 to 2018; President and CEO 2018 to present;
- 16           ▪ J. Douglas Hines: Senior Vice President, Sales and Marketing at COSI in the  
17           1990s, joining Bumble Bee in 1997, Executive Vice President and COO at  
18           Bumble Bee from September 2008 to September 2012;
- 19           ▪ Joseph Clancy: Vice President Sales/Marketing at StarKist from 1985 to 2002,  
20           Vice President Retail Sales at COSI, from November 2002 to December 2010;
- 21           ▪ Kevin McClain: Vice President of Supply Chain at COSI from 1979 to 2009,  
22           Vice President of Resourcing at Bumble Bee from 2009 to present;
- 23           ▪ David Burt: General Manager–Marketing at StarKist from 2000 to 2004, Vice  
24           President Sales Specialty Markets at Bumble Bee from March 2004 to present;
- 25           ▪ Hubert Tucker: Sales Manager at COSI from December 1997 to July 2012,  
26           Starkist’s Director of Sales Eastern Zone from July 2012 to present;

- 1           ▪ Donald Stanton: General Manager Inventory Control at StarKist from 1985 to  
2           2001, Vice President Supply Chain at Bumble Bee from October 2005 to January  
3           2009;
- 4           ▪ Dennis Hixson: Vice President Sales Specialty Markets at COSI from 2005 to  
5           2013, Senior Retail Operations Manager at StarKist from 2014 to present.

6           197. The fluid movement of executives among StarKist, Bumble Bee, and COSI  
7           resulted in a web of personal and professional relationships that facilitated anticompetitive  
8           agreements and frequent exchanges of confidential and future price information.

9           198. Additionally, there were a number of close personal relationships between key  
10          members of the conspiracy. For example, Kenneth Worsham, Senior Vice President of Trade  
11          Marketing for Bumble Bee, is the son of Bob Worsham, who had been a StarKist pricing  
12          consultant since the 1980s. Bob Worsham worked with Stephen Hodge at StarKist and  
13          connected Hodge with his son, facilitating their sharing and coordination of pricing information  
14          and price increases between StarKist and Bumble Bee.

15          199. Due to these close personal relationships, senior executives at the competitor  
16          companies spoke to their counterparts frequently. This familiarity and frequent contact bred and  
17          facilitated a culture of collusion in the Packaged Tuna industry during the Conspiracy Period.

18          200. Walter Scott Cameron held senior sales positions at Bumble Bee since May  
19          2000, becoming its Senior Vice President of Sales in May 2007. He frequently shared future  
20          pricing and customer information with the leadership of COSI and StarKist. From October 2009  
21          to September 2012, Cameron regularly communicated with Charles Handford, StarKist's Vice  
22          President of Trade Marketing, about future pricing and customer information, sometimes  
23          several times per day.

24          201. During the Conspiracy Period, Cameron held frequent internal sales conference  
25          calls at Bumble Bee attended by numerous account managers. During these calls, he stated that  
26          he had been communicating with Handford of StarKist about future pricing for customers.

1           202. Cameron also spoke about future pricing with Frank Connelly, a COSI regional  
2 sales manager from at least 2000 until his death in April 2012.

3           203. Lischewski regularly had meetings at his office with COSI executives. He also  
4 had discussions with StarKist executives by phone. Among others, Lischewski spoke frequently  
5 with Dennis Mussell, COSI President and CEO prior to 2005; John Signorino, COSI President  
6 and CEO, from January 2005 to October 2007; Shue Wing Chan, Signorino's successor at COSI  
7 after October 2007; and Don Binotto of Del Monte/StarKist (StarKist CEO from the 1990s  
8 through November 2010) to agree on pricing and customers. Lischewski and Kenneth  
9 Worsham, Senior Vice President of Marketing at Bumble Bee, regularly attended meetings with  
10 COSI and StarKist executives.

11           204. During the Conspiracy Period, Worsham frequently discussed Bumble Bee's  
12 future pricing and shared customer opportunities with his father, Bob Worsham, and then shared  
13 StarKist's future pricing information that Worsham received with executives at Bumble Bee,  
14 including Lischewski.

15           205. During the Conspiracy Period, Don George of Bumble Bee discussed future  
16 pricing with his former COSI colleagues, including Mike White. George had been the Senior  
17 Vice President of Trade Marketing and Innovation at COSI from June 1979 until May 2006,  
18 when he became Vice President of Trade Marketing at Bumble Bee.

19           206. During the Conspiracy Period, COSI held weekly executive meetings on Fridays  
20 at 10:00 a.m. They were led by its CEO (John Signorino and later Shue Wing Chan) and  
21 attended by all department heads including John Sawyer, Senior Vice President of Sales and  
22 Marketing from 2006 to August 2013; Bob Blatt, CFO from the late 1990s to 2013; Jim Davet,  
23 Senior Vice President Operations from 2005 until 2008; Mike White, Director of Marketing  
24 since the late 1980s; and Kevin McClain, Vice President of Supply Chain until 2009. At these  
25 meetings Sawyer, White, and Signorino/Chan discussed competitors' future price increases for  
26

1 Packaged Tuna products. On multiple occasions, Sawyer presented the group with StarKist’s  
2 future price lists (described as “market intelligence”), which Sawyer received from StarKist.

3 207. During the Conspiracy Period, Mike White regularly contacted his counterparts  
4 at Bumble Bee and StarKist (including Joseph Tuza, a Del Monte executive and StarKist Senior  
5 Vice President of Marketing from August 2008 until November 2011, when Tuza was replaced  
6 with Stephen Hodge), to confirm price quotations received from his competitors.

7 **F. Trade Associations Facilitated Collusion**

8 208. The conspiracy was also enabled by numerous trade associations that counted  
9 Defendants and their co-conspirators among their primary, and in some cases only, members.

10 209. Defendants and their co-conspirators had ample opportunities for collusion.  
11 Senior executives from Del Monte, StarKist, Bumble Bee, COSI, Dongwon, and Thai Union  
12 routinely attended trade shows and conferences during which they discussed Packaged Tuna  
13 pricing and other aspects of their anticompetitive conspiracy. They regularly attended the multi-  
14 day biannual Infofish “tuna conference” — typically held in Bangkok, but never held in the  
15 United States (where there is more active antitrust enforcement) — as well as regular meetings  
16 of the International Seafood Sustainability Foundation (“ISSF”) and its governing body, the  
17 International Seafood Sustainability Association (“ISSA”).

18 210. Lischewski; In-Soo Cho, former president and CEO of StarKist; and Shue Wing  
19 Chan, former CEO of COSI; all served as ISSA Board Members. The ISSF and the ISSA  
20 provided the StarKist, Bumble Bee, and COSI numerous and ongoing opportunities to interact  
21 at meetings, conferences, and to participate in conference calls. ISSF bylaws provide for  
22 meetings of the ISSF Board of Directors to be held three times each year.

23 211. Lischewski served as chair of NFI, the leading seafood trade group in the United  
24 States, throughout 2013 and was an active member of NFI prior to his indictment in 2018.

25 212. Defendants and their co-conspirators also collaborated on many projects during  
26 the Conspiracy Period, including their joint “Tuna the Wonderfish” advertising campaign, the



1 National Fisheries Institute's ("NFI") Tuna Council (formerly known as the U.S. Tuna  
2 Foundation), and the collective efforts of the ISSF. In 2007, NFI created the Tuna Council,  
3 whose only members were StarKist, Bumble Bee, and COSI.

4 213. Frequent international trade meetings provided opportunities for fostering close  
5 relationships with competitors and ultimately facilitated high-level collusion. Meetings hosted  
6 by NFI and ISSF were typically limited to Defendants' high-level executives, and perhaps one  
7 organizer from the trade associations. The organizers often had roots in Defendants' companies.

8 214. These conferences provided regular opportunities to arrange off-agenda  
9 meetings without raising suspicions. Planning and attending trade organization events provided  
10 cover for Defendants and their co-conspirators to discuss and exchange confidential information  
11 in furtherance of their price-fixing conspiracy.

12 215. For example, the NFI's "Tuna the Wonderfish" advertising campaign, which ran  
13 from early 2011 through early 2012, was designed to stem the tide of declining sales of  
14 Packaged Tuna in the United States. The "Tuna the Wonderfish" campaign gave Defendants  
15 and their co-conspirators ample opportunities to conspire to raise and fix Packaged Tuna prices.  
16 Although the campaign was unsuccessful in boosting consumption, Defendants and their co-  
17 conspirators nonetheless jointly implemented price increases at least three times in 2011 and  
18 2012 in the face of falling demand.

19 216. On information and belief, Lischewski used these trade association meetings to  
20 provide cover for one-on-one meetings with senior leaders of Bumble Bee's competitors to re-  
21 inforce their collusive price increases and ensure compliance with their collusive agreements.

22 **G. Common Vendors and Co-Packing Arrangements Facilitated Collusion**  
23 **and Enforcement of the Cartel**

24 217. During the Conspiracy Period, and particularly between approximately 2004 and  
25 2010, Defendants shared a common can manufacturer in American Samoa, Impress. StarKist,  
26 Bumble Bee, and COSI each knew at the time that Impress was sharing production and other

1 information about each company with the others. They used Impress as a conduit to facilitate  
2 the exchange of information in furtherance of the conspiracy. Impress is a co-conspirator and  
3 its role in this regard is illustrated in connection with the collusive can size reduction that  
4 occurred in 2007 and 2008.

5 218. In addition to economic and other conditions that facilitated the conspiracy, in  
6 2011, Bumble Bee and COSI entered into co-packing agreements in which Bumble Bee's  
7 factory in Santa Fe Springs, California, packed and canned tuna for COSI's west coast  
8 operations, and COSI's plant in Lyons, Georgia, packed the canned tuna for Bumble Bee's east  
9 coast operations. This co-packing arrangement enabled Bumble Bee and COSI to monitor each  
10 other's output and pricing.

#### 11 IX. TRADE AND COMMERCE

12 219. During the Conspiracy Period, Defendants produced Packaged Tuna that was  
13 sold globally, both directly and indirectly, including in the United States and to the State of  
14 Washington, businesses in the State of Washington, and residents of the State of Washington.

15 220. Defendants and their co-conspirators engaged in business that affects or is within  
16 the flow of interstate or foreign commerce, and the effect of that business on interstate or foreign  
17 commerce is substantial. In particular, Defendants and their co-conspirators: (1) sold and  
18 shipped substantial quantities of canned tuna in a continuous and uninterrupted flow in interstate  
19 commerce to customers located in states other than the states in which the Defendants and their  
20 co-conspirators produced the canned tuna; (2) exchanged data, information, correspondence,  
21 and/or financial material in the state in which each is located, incorporated, or has its principal  
22 place of business and other states; (c) deposited and withdrew funds and made financial  
23 transactions with banks outside of the state in which each Defendant is located, incorporated,  
24 or has its principal place of business and other states; and/or (d) imported substantial quantities  
25 of raw materials for canned tuna from outside the United States.



1 paid in the absence of Defendants' illegal conduct in an amount presently undetermined. This  
2 is an antitrust injury of the type antitrust laws were meant to punish and prevent.

3 **XI. CAUSE OF ACTION: VIOLATION OF RCW 19.86.030**

4 228. Defendants and their co-conspirators engaged in a continuing contract,  
5 combination, or conspiracy to artificially fix, raise, maintain and/or stabilize the prices of  
6 Packaged Tuna within the United States, and particularly in Washington, in violation of RCW  
7 19.86.030.

8 229. Defendants' anticompetitive acts were intentionally directed at the United States  
9 market for Packaged Tuna and had a substantial and foreseeable effect on interstate commerce  
10 by raising and fixing Packaged Tuna prices throughout the United States, and in particular,  
11 Washington.

12 230. The contract, combination or conspiracy had the following direct, substantial,  
13 and reasonably foreseeable effects upon commerce in the United States and Washington: (1)  
14 prices charged to, and paid by, Washington and its residents for Packaged Tuna were artificially  
15 raised, fixed, maintained, or stabilized at supra-competitive levels; (2) competition in  
16 establishing prices paid for Packaged Tuna has been unlawfully restrained, suppressed, or  
17 eliminated.

18 231. Defendants and their co-conspirators' anticompetitive activities have directly  
19 and proximately caused injury to Washington residents.

20 **XII. PRAYER FOR RELIEF**

21 Accordingly, the Attorney General on behalf of the State of Washington and its  
22 residents, respectfully requests that:

23 1. The Court determine that the unlawful conduct alleged herein be adjudged and  
24 decreed to be in violation of RCW 19.86.030.

25 2. The Court Award restitution to the State of Washington on behalf of its residents  
26 to the maximum extent allowed under applicable state law and that a judgment in favor of the

1 State of Washington be entered against Defendants in an amount such laws permit.

2 3. That Defendants, their affiliates, successors, transferees, assignees and other  
3 officers, directors, partners, agents and employees thereof, and all other persons acting or  
4 claiming to act on their behalf or in concert with them, be permanently enjoined and restrained  
5 from in any manner continuing, maintaining or renewing the conduct, contract, conspiracy, or  
6 combination alleged herein, or from entering into any other contract, conspiracy, or  
7 combination having a similar purpose or effect, and from adopting or following any practice,  
8 plan, program, or device having a similar purpose or effect.

9 4. The State of Washington recover its costs of suit, including reasonable attorneys'  
10 fees, as provided by law.

11 5. The State of Washington have such other and further relief as the case may  
12 require and the Court may deem just and proper.

13 DATED this 2nd day of June, 2020.

14 ROBERT W. FERGUSON  
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15 s/ Holly A. Williams

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