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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

IN RE: PACKAGED SEAFOOD PRODUCTS ANTITRUST LITIGATION	Case No. 15-MD-2670 JLS (MDD)
This Document Relates To: The Commercial Food Preparer Actions	**MEMORANDUM IN SUPPORT OF COMMERCIAL FOOD PREPARER PLAINTIFFS' MOTION FOR CLASS CERTIFICATION AND APPOINTMENT OF LEAD COUNSEL**

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MEMORANDUM IN SUPPORT OF COMMERCIAL FOOD PREPARER PLAINTIFFS' MOTION FOR CLASS CERTIFICATION AND APPOINTMENT OF LEAD COUNSEL

This is a classic price-fixing case against the major producers of packaged seafood. Such cases have been widely recognized by courts as particularly appropriate for class treatment, and plaintiffs move for class certification here, pursuant to Fed. R. Civ. P. 23(b)(3).

The suit alleges a conspiracy among the defendants[1] ("Defendants"), who control the vast majority of the relevant U.S. market, to fix and maintain prices for packaged tuna above competitive levels. In the course of the conspiracy, which commenced no later than June, 2011, the Defendants repeatedly colluded to inflate their prices. An ongoing criminal investigation has already resulted in guilty pleas by multiple participants in the conspiracy. *See* Declaration of Peter Gil-Montllor dated May 29, 2018 ("Gil-Montllor Decl.") at 5-6.

Suits by several groups of injured plaintiffs are pending in this Court. This suit is brought by indirect purchasers of large sizes of packaged tuna ("Large-Sized Packaged Tuna" or "Food Service Products"), many of which used the tuna to prepare food for sale ("Commercial Food Preparers" or "CFPs" or "Plaintiffs").[2]

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[1] Defendants are Bumble Bee Foods LLC; Lion Capital LLP; Lion Capital (Americas), Inc.; Lion/Big Catch Cayman LP ("Big Catch"); Tri-Union Seafoods LLC; Thai Union Group Public Company Limited; Del Monte Corporation; StarKist Company; and Dongwon Industries Co., Ltd.

[2] Proposed class representatives are Thyme Café & Market (CA), Simon-Hindi LLC, d/b/a Simon's (CA), Capitol Hill Supermarket (DC), Confetti's (FL), Maquoketa Care Center, Inc (IA), A-1 Diner (ME), Francis T. Enterprises d/b/a

CFPs include restaurants and other retail food service establishments, caterers, and institutional food services like schools and company cafeterias.

The Plaintiffs who join in this Complaint are from 27 states[3] and the District of Columbia and seek to represent similarly situated entities in those jurisdictions. They seek to certify a class (the "Class") under California's Cartwright Act defined as follows:

> Food Service Product Class: All persons and entities in 27 named states and D.C., that indirectly purchased packaged tuna products produced in packages of 40 ounces or more that were manufactured by any Defendant (or any current or former subsidiary or any affiliate thereof) and that were purchased directly from

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Erbert & Gerbert's (MN), Groucho's Deli of Raleigh (NC), Sandee's Catering (NY), Groucho's Deli of Five Points (SC), Rushin Gold d/b/a the Gold Rush (TN), and Erbert & Gerbert's (WI). Proposed class representatives purchased packaged seafood products made by defendants from Large Distributors during the Class Period such that they are valid class representatives. *See* Gil-Montllor Decl. at 3. CFPs have agreed to stipulate with defendants to add Groucho's Deli of Raleigh, Sandee's Catering, Groucho's Deli of Five Points, and Confetti's as named plaintiffs in the case. In addition, CFPs are joining a motion with End Payer Plaintiffs to amend their complaint to add Chis Lischewski as a defendant in light of his recent indictment. CFPs intend to add the named plaintiffs to the operative complaint at their first opportunity to amend.

[3] Arizona, Arkansas, California, Florida, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, West Virginia, and Wisconsin.

> DOT Foods, Sysco, US Foods, Sam's Club, Wal-Mart, or Costco[4] (other than inter-company purchases among these distributors) from June, 2011 through December, 2016 (the "Class Period").[5]

Members of the proposed Class were affected by the conspiracy in the same way, including fact of injury and aggregate damages. Their purchases of tuna were standardized. The packages of tuna they received from their suppliers were in the same containers that the suppliers received as manufactured by the Defendant—mostly 43 ounce pouches and 66.5 ounce cans. Expert Report of Michael A. Williams, Ph.D. ("Williams Rpt.") at ¶ 13. The pricing was also standardized; because profit margins are low in the food supply industry, and because there is essentially no price negotiation in Plaintiffs' purchases from suppliers, price increases imposed by the co-conspirators on the wholesale suppliers were invariably passed on to the Plaintiffs. As a result, common issues will predominate in the case as a whole—including whether Defendants in fact conspired to inflate prices above competitive levels and whether they did inflate prices above competitive levels—and in regard to each component of Plaintiffs' claims, including whether Defendants' conspiracy had a widespread effect across members of the proposed Class. In these circumstances, courts in price-fixing cases routinely certify indirect purchaser classes. *See, e.g.*, *In re Korean Ramen Antitrust Litig.*, No. 13-cv-04115-WHO, 2017 WL 235052, at *24 (N.D. Cal. Jan. 19, 2017) ("*Korean Ramen I*"); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 267 F.R.D. 583, 587 (N.D. Cal. 2010) (hereinafter "*TFT-LCD I*").

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[4] DOT Foods, Sysco, US Foods, Sam's Club, Wal-Mart, and Costco are at times referred to herein as "Large Distributors."

[5] In the alternative, as discussed below at V.C., Plaintiffs seek certification under the laws of multiple states.

I. BACKGROUND

Defendants laid the groundwork for their price-fixing conspiracy before 2008 when they entered into co-packing agreements with one another. Gil-Montllor Decl. at 21. These agreements provided the Defendants with the ability to track their competitors' costs and created a monitoring mechanism. *Id*. at 25. In 2008, Defendants shifted from making six ounce to five ounce cans of tuna while keeping the price of the product roughly the same. *Id*. at 31-37. This decrease in can size occurred as the result of information exchange and coordination that took place electronically, in person, and by phone. *Id*. Following the can downsize, repeated coordinated price increases have occurred in the wake of extensive inter-competitor telephone, electronic, and in-person communication and exchange of competitive information. *Id*. at 38-46. Bumble Bee has pleaded guilty to a price-fixing conspiracy. *Id*. at 5-6 Bumble Bee employees Ken Worsham and Scott Cameron and StarKist employee Steve Hodge has also pleaded guilty to having participated in a price-fixing conspiracy. *Id*. Former Bumble Bee CEO Chris Lischewski has been indicted for his role in the price-fixing conspiracy. *Id.*

This litigation involves numerous common issues of law and fact including:

a. Whether the Defendants and their co-conspirators engaged in a combination and conspiracy to fix, raise, maintain or stabilize the prices of packaged tuna sold in the United States and each of the States involved in this complaint.

b. The identity of the participants in the alleged conspiracy.

c. Whether Defendants' conduct inflated prices above competitive levels in general.

d. The amount of the aggregate damages that the proposed Class incurred.

e. The appropriate relief for the Class, including injunctive and equitable relief.

As Plaintiffs will also show, the applicable laws of the States involved in this Complaint are relatively similar to each other with respect to antitrust, restraint of trade, consumer protection and unfair competition.

II. STANDARDS FOR CLASS CERTIFICATION

In deciding whether to certify a class, a court should conduct a rigorous inquiry. *See Gen. Tel. Co. of the Southwest v. Falcon*, 457 U.S. 147, 161 (1982). That said, the issue is only whether Rule 23 is satisfied, not whether Plaintiffs will prevail. *See United Steel, Paper & Forestry, Rubber, Mfg. Energy v. ConocoPhillips Co.*, 593 F.3d 802, 808 (9th Cir. 2010) (citing *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177-78 (1974)). As a result, a court should assess the merits only to the extent necessary to apply Rule 23. *Amgen, Inc. v. Conn. Ret. Plans & Trust Funds*, 568 U.S. 455, 466 (2013) ("[m]erits questions may be considered to the extent—but only to the extent—that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied."); *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 352 n.6 (2011) (noting that a district court has no "authority to conduct a preliminary inquiry into the merits of a suit" at the class certification stage unless such inquiry is needed "to determine the propriety of certification.") (internal quotations omitted). If the Court needs to "probe behind the pleadings," it should do so only for purposes of assessing whether Rule 23 is satisfied, not to assess the merits for their own sake. *See In re National Western Life Insurance Deferred Annuities Litigation*, 268 F.R.D. 652, 659 (S.D. Cal. 2010) (adding that "the Court must avoid either party bootstrapping a trial or summary judgment motion into the certification stage") (internal quotation omitted); *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 983

n.8 (9th Cir. 2011) (stating that an examination of the merits of the underlying claim is required "only inasmuch as [a court] must determine whether common questions exist; not to determine whether class members could actually prevail on the merits of their claims. . . . To hold otherwise would turn class certification into a mini-trial.").

Class certification under Rule 23(a) requires four showings: "(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law and fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a). In addition to the Rule 23(a) prerequisites, "parties seeking class certification must show that the action is maintainable under Rule 23(b)(1), (2), or (3)." *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 614 (1997). Rule 23(b)(3), relevant here, requires that (1) "questions of law or fact common to class members predominate over any questions affecting only individual members" and (2) "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

Antitrust cases are particularly well-suited for class certification. *In re High-Tech Emp. Antitrust Litig.*, 985 F. Supp. 2d 1167, 1179 (N.D. Cal. 2013) ("The Supreme Court has long recognized that class actions serve a valuable role in the enforcement of antitrust laws.") (hereinafter "*High-Tech*"); *see also TFT-LCD I*, 267 F.R.D. at 592 ("[A] class-action lawsuit is the most fair and efficient means of enforcing the law where antitrust violations have been continuous, widespread, and detrimental to as yet unidentified consumers." (citation omitted)); *In re Rubber Chem. Antitrust Litig.*, 232 F.R.D. 346, 350 (N.D. Cal. 2005) ("Class actions play an important role in the private enforcement of antitrust actions. For this reason, courts resolve doubts in these actions in favor of certifying the class." (citations

omitted)). Federal courts routinely certify classes in price-fixing antitrust cases brought by indirect purchasers. *See, e.g.*, *TFT-LCD I*, 267 F.R.D. at 592 ("Courts have stressed that price-fixing cases are appropriate for class certification." (quoting *Rubber Chems.*, 232 F.R.D. at 350)).

Actions such as this one resulting from horizontal price-fixing conspiracies—as well as other *per se* antitrust violations—are routinely certified. *See, e.g.*, *Nitsch v. Dreamworks Animation SKG Inc.*, 315 F.R.D. 270, 317 (N.D. Cal. 2016); *In re Cathode Ray Tube (CRT) Antitrust Litig.*, 308 F.R.D. 606, 630 (N.D. Cal. 2015) (hereinafter "*CRT I*"); *High-Tech*, 985 F. Supp. 2d at 1229; *TFT-LCD I*, 267 F.R.D. at 608; *In re Apple iPod iTunes Antitrust Litig.*, No. C 05-00037 JW, 2011 WL 5864036 at *4 (N.D. Cal. Nov. 22, 2011); *In re Online DVD Rental Antitrust Litig.*, No. M 09-2029 PJH, 2010 WL 5396064 at *12 (N.D. Cal. Dec. 23, 2010); *Pecover v. Elec. Arts Inc.*, No. C 08-2820 VRW, 2010 WL 8742757, at *26 (N.D. Cal. Dec. 21, 2010); *In re Apple iPod iTunes Antitrust Litig.*, No. C 05-00037 JW, 2008 WL 5574487, at **8-9 (N.D. Cal. Dec. 22, 2008) *amended by*, No. C 05-00037 JW, 2009 WL 249234 (N.D. Cal. Jan. 15, 2009); *In re Static Random Access Memory (SRAM) Antitrust Litig.*, No. C 07-01819 CW, 2008 WL 4447592, at *7 (N.D. Cal. Sept. 29, 2008) (hereinafter "*SRAM I*").

All of the requirements of Rule 23(a) and 23(b)(3) are satisfied here.

III. PLAINTIFFS SATISFY RULE 23(a)

A. Numerosity: The Proposed Class Is Numerous

Rule 23(a)(1) "requires that a class be so numerous that joinder of all members is impracticable." *Lee v. Enterprise Leasing Company-West, LLC*, 300 F.R.D. 466, 469 (D. Nev. 2014). "Numerosity" is generally satisfied when a proposed class includes more than forty members. *Ries v. Ariz. Beverages USA LLC*, 287 F.R.D. 523, 536 (N.D. Cal. 2012) ("While there is no fixed number that

satisfies the numerosity requirement, as a general matter, a class greater than forty often satisfies the requirement, while one less than twenty-one does not."). Here, the proposed Class includes thousands of members. *See* Williams Rpt. at ¶¶ 101-02. Numerosity is satisfied.

B. Commonality: A Question of Law or Fact Is Common to Class Members

Commonality requires only a single significant issue of law or fact common to a class. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011) ("[F]or purposes of Rule 23(a)(2) [e]ven a single [common] question will do." (quotation marks and citation omitted)); *Abdullah v. U.S. Sec. Assoc., Inc.*, 731 F.3d 952, 957 (9th Cir. 2013) ("[A]ll that Rule 23(a)(2) requires is 'a single *significant* question of law or fact.'" (quoting *Mazza v. Am. Honda Motor Co.*, 666 F3d 581, 589 (9th Cir. 2012))); *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1172 (9th Cir. 2010) ("Commonality exists where class members' situations share a common issue of law or fact, and are sufficiently parallel to insure a vigorous and full presentation of all claims for relief." (quotation marks and citation omitted)). In price-fixing cases, "courts have consistently held that 'the very nature of a conspiracy antitrust action compels a finding that common questions of law and fact exist.'" *TFT-LCD I*, 267 F.R.D. at 593 (N.D. Cal. 2010) (quoting *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, No. M 02-1486 PJH, 2006 WL 1530166, at *3 (N.D. Cal. June 5, 2006)); *see also Rubber Chem.*, 232 F.R.D. at 351; *In re Aluminum Phosphide Antitrust Litig.*, 160 F.R.D. 609, 613 (D. Kan. 1995) ("[A]ntitrust price-fixing conspiracy cases, by their nature, deal with common legal and factual questions about the existence, scope and effect of the alleged conspiracy.") (quoting *In re Sugar Indus. Antitrust Litig.*, 73 F.R.D. 642, 646 (E.D. Pa. 1988)); 1 Newberg on Class Actions § 20:38 (5th ed.) ("Courts have long noted that antitrust claims are particularly suited for class treatment . . . . In

particular, an allegation of a price-fixing conspiracy is usually considered to be a common question of sufficient importance to satisfy Rule 23(a)(2)"). Common issues here include: (1) whether the defendants fixed prices; (2) whether their conduct violated the law; and (3) whether their conduct inflated prices above competitive levels in general. Commonality is satisfied.

C. Typicality: The Proposed Representatives' Claims Are Typical

The claims of the Class representatives are typical of the claims of the Class members because they all generally arise from the same events and the same legal arguments. *See Thomas & Thomas Rodmakers, Inc. v. Newport Adhesives & Composites, Inc.*, 209 F.R.D. 159, 164 (C.D. Cal. 2002); *Kristensen v. Credit Payment Servs.*, 12 F. Supp. 3d 1292, 1304–05 (D. Nev. 2014). The nature of the claims must be the same, but the specific facts giving rise to the claims need not be. *See Ellis*, 657 F.3d at 984. Typicality is generally satisfied in cases involving antitrust violations. *See Pecover*, 2010 WL 8742757, at *11 (N.D. Cal. Dec. 21, 2010). The focus should be "on the defendants' conduct and the plaintiff's legal theory, not the injury caused to the plaintiff." *Costelo v. Chertoff*, 258 F.R.D. 600, 608 (C.D. Cal. 2009) (citation omitted). The typicality requirement is readily satisfied in antitrust cases because the same antitrust violation is the target of the claims of the named Plaintiffs and the Class members. *See Rubber Chems.*, 232 F.R.D. at 351.

Here, Plaintiffs' claims are typical because "they stem from the same event, practice, or course of conduct that forms the basis of the claims of the class and are based on the same legal or remedial theory." *In re Citric Acid Antitrust Litig.*, No. 95-1092, C-95-2963 FMS, 1996 WL 655791, at *3 (N.D. Cal. Oct. 2, 1996); *see also Sobel v. The Hertz Corp.*, 291 F.R.D. 525, 541-42 (D. Nev. 2013) (typicality satisfied where "the claims of the named plaintiffs arise from the same event that gives rise to the claims of the other class members, and the named plaintiffs'

claims are based on the same legal theories as the other class members' claims."), *aff'd in part*, 674 F App'x 663, 666 (9th Cir. 2017) (affirming class certification); *Greene v. Jacob Transp. Servs., LLC*, No. 2:09-cv-00466-GMN-CWH, 2017 WL 4158605, at *4 (D. Nev. Sep. 19, 2017). Plaintiffs' claims, like those of the Class members, stem from the defendants' fixing of prices for a single commodity, Large-Sized Packaged Tuna. Like all members of the Class, each of the proposed Class representatives allegedly paid supra-competitive prices as a result of defendants' antitrust violation. Further, common evidence shows that each of the named Plaintiffs paid an overcharge on at least one of its purchases.[6] *See* Williams Rpt. at ¶¶ 101-102. The proposed Class representatives' claims are typical of the Class they seek to represent.

D. Adequacy: Plaintiffs Will Fairly and Adequately Represent the Class

The final requirement of Rule 23(a) is adequacy of representation. There are two aspects to adequacy: "(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members, and (2) will the named plaintiffs and

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[6] To the extent the proposed Class representatives bought from Sysco or US Foods, Dr. Williams' analysis confirms that they paid overcharges. Williams Rpt. at ¶¶ 99-108. Where all class members pursue claims under California law, there is no requirement that there be a class representative in every state. *See, e.g.*, *Allen v. Hyland's, Inc.*, 300 F.R.D. 643, 658 (C.D. Cal. 2014). Standing as to the Cartwright Act has been established through the existence of class representatives in California who purchased Large-Sized Packaged Tuna in California and were harmed by the conspiracies. *See Knevelbaard Dairies v. Kraft Foods, Inc.*, 232 F.3d 979 (9th Cir. 2000).

their counsel prosecute the action vigorously on behalf of the class?" *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998); *Ellis*, 657 F.3d at 985. Plaintiffs satisfy the "adequacy" test because: (1) they do not have interests in conflict with those of the Class regarding the litigation; and (2) they and their counsel have vigorously represented and will continue to vigorously represent the interests of the Class. *See Greene*, 2017 WL 4158605, at *5 (citing *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1031 (9th Cir. 2012)); *SRAM I*, 2008 WL 4447592, at *4 (N.D. Cal. Sept. 29, 2008).

Here, the interests of the named Plaintiffs are fully aligned with those of absent Class members in proving that the Defendants violated the antitrust laws and thereby artificially inflated prices for Large-Sized Packaged Tuna above competitive levels. *See Cummings v. Connell*, 316 F.3d 886, 896 (9th Cir. 2003) ("This circuit does not favor denial of class certification on the basis of speculative conflicts."); *High-Tech.*, 985 F. Supp. 2d at 1181 (finding adequacy where "named Plaintiffs and [absent] Class members share an interest in proving that Defendants' conduct violated the antitrust laws and suppressed their compensation").

Further, Plaintiffs and their counsel have represented and will represent the Class vigorously. The Plaintiffs have responded appropriately to the obligations thus far imposed on them, including such discovery as has been propounded. Principal counsel for the CFP Plaintiffs in this case is the firm of Cuneo Gilbert & LaDuca, LLP. The firm and its members have been designated as Lead Counsel or Co-Lead Counsel in other cases, including *In re Automotive Parts Antitrust Litigation*, 2:12-md-02311 (E.D. Mich.), representing a putative class of thousands of automobile dealers bringing numerous complaints stemming from the largest investigation in the history of the U.S. Department of Justice's Antitrust Division; *In re Generic Pharmaceuticals Pricing Litigation*, MDL No. 2724, representing a putative class of thousands of independent pharmacies bringing indirect purchaser

actions against various generic drug manufacturers; and *Los Gatos Mercantile, Inc., et al., v. E.I. Dupont De Nemours and Company, et al.*, No. 3:13-cv-01180-WHO (N.D. Cal.), representing a putative class of indirect purchasers of titanium dioxide in a case alleging violations of federal and state antitrust and consumer protection laws, and have prosecuted those cases vigorously and responsibly. Gil-Montllor Decl. at 50. Additional proposed Class Counsel have similar experience and qualifications. *See* Gil-Montllor Decl. at 50, 51. *See Marcus v. Kansas Dep't of Revenue*, 206 F.R.D. 509, 512 (D. Kan. 2002) ("In absence of evidence to the contrary, courts will presume the proposed class counsel is adequately competent to conduct the proposed litigation."). The Class representatives and Class Counsel satisfy the adequacy requirement.

IV. PLAINTIFFS SATISFY RULE 23(b)(3)

To qualify for certification under Rule 23(b)(3), a class must meet two requirements beyond the Rule 23(a) prerequisites: common questions must predominate over any questions affecting only individual members; and class resolution must be superior to other available methods for the fair and efficient adjudication of the controversy. Fed. R. Civ. P. 23(b)(3).

A. Common Issues Predominate.

Plaintiffs establish predominance in at least two independently sufficient ways. First, common issues predominate in the *case as a whole*. In addition, common issues predominate as to *each component* of Plaintiffs' claims. As explained in *Amgen*, Plaintiffs need not show they will *prevail* on the predominantly common issues; rather they must show only that they can *offer evidence* common to the class. *Amgen*, 568 U.S. at 459. Predominance requires that "*questions* common to the class predominate, not that those questions will be answered, on the merits, in favor of the class." *Id.* (emphasis in original).

1. Common Issues Predominate in the Case as a Whole.

The Supreme Court and the Ninth Circuit have held that Rule 23(b)(3) is satisfied if common issues predominate in the case *as a whole*; each element of Plaintiffs' claims need not be predominantly common. *See Amgen*, 568 U.S. at 469 (Rule 23(b)(3) "does not require a plaintiff seeking class certification to prove that each element of her claim is susceptible to class wide proof.") (citation omitted); *Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1134 (9th Cir. 2016) (predominance inquiry asks court to make a "global determination of whether common questions prevail over individualized ones"); *In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig.*, 722 F.3d 838, 859 (6th Cir. 2013) (predominance "does not mandate that a plaintiff seeking class certification prove that each element of the claim is susceptible to classwide proof"); *Magadia v. Wal-Mart Assoc. Inc.*, No. 17-CV-00062-LHK, 2018 WL 339139 at *6 (N.D. Cal. Jan. 9, 2018) (Plaintiffs "need only show that common questions will predominate with respect to their class as a whole.") (quotation omitted); *High-Tech*, 985 F. Supp. at 1184 ("[P]laintiffs [a]re not required to demonstrate that common questions w[ill] predominate with respect to each element.") (citing *Amgen*, 568 U.S. at 469).

Accordingly, courts have certified classes even where some elements of a claim may give rise to individualized issues, such as proof of impact or injury. *See, e.g., Torres*, 835 F.3d at 1136-37 (certifying class because common issues predominated in the case as a whole, even though *fact of injury* was an element of plaintiffs' claims and they had not shown it was common to the class); *Leyva v. Medline Indus. Inc.*, 716 F.3d 510, 513–14 (9th Cir. 2013) (holding common issues predominated in case as a whole despite individualized damages issues); *see also Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398, 2412 (2014) ("[w]hile [the Defendants' defense] has the effect of leaving individualized questions of reliance in the case, there is no reason to think that these questions will overwhelm

common ones and render class certification inappropriate under Rule 23(b)(3)") (quotation omitted); *see also Cordes & Co. Fin. Servs. Inc. v. A.G. Edwards & Sons, Inc.*, 502 F.3d 91, 108 (2d Cir. 2007) (reversing denial of class certification and cautioning, "[e]ven if the district court concludes that the issue of injury-in-fact presents individual questions, however, it does not necessarily follow that they predominate over common ones and that class action treatment is therefore unwarranted"); *Greene*, 2017 WL 4158605, at *5 (when "common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication[,]" damages decided on an individual basis will not preclude class certification) (quotation omitted); *In re Lidoderm Antitrust Litig.*, No. 14-md-02521-WHO, 2017 WL 679367, at *1 (N.D. Cal. Feb. 21, 2017) (certifying class treatment of direct and indirect purchaser antitrust claims even though "determining whether any particular plaintiff was injured and how to apportion damages between the plaintiffs necessarily involves individualized questions that are undeniably complex"). Here, as in many antitrust cases, the litigation will focus overwhelmingly on common issues, particularly on the defendants' conduct. *Amchem Prod.*, 521 U.S. at 625 ("Predominance is a test readily met in certain cases alleging. . . violations of the antitrust laws.").

This case presents a classic Rule 23(b)(3) scenario where the central issues are the existence and nature of Defendants' violations of the antitrust laws. Whether an anticompetitive conspiracy exists is a common question that predominates over other issues "because proof of an alleged conspiracy will focus on defendants' conduct and not on the conduct of individual class members." *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 267 F.R.D. 291, 310 (N.D. Cal. 2010) (citing cases) (hereinafter *TFT-LCD II*). "[T]he existence, scope, and efficacy of the alleged conspiracy. . . are common questions that all plaintiffs must address." *Online DVD*, 2010 WL 5396064, at *3 (quoting *Rubber Chems.*, 232 F.R.D. at

351). Thus, what matters in this case is "what defendants did, rather than what plaintiffs did." *TFT-LCD II*, 267 F.R.D. at 310 (internal quotation marks omitted). If the Court finds that common proof of Defendants' antitrust conspiracy will be the predominant issue at trial, the Court may find class certification is warranted on that basis alone. *High-Tech*, 985 F. Supp. 2d at 1227 (The "question [of defendants' antitrust violation] is likely to be central to this litigation."); *In re Static Random Access Memory (SRAM) Antitrust Litig.*, 264 F.R.D. 603, 611 (N.D. Cal. 2009) ("[P]laintiffs need not show that there will be common proof on each element of the claim" especially where proof of the violation is "the predominant issue" (citation omitted)) (hereinafter *SRAM II*); 6 NEWBERG ON CLASS ACTIONS, § 18.25 (4th ed. 2002) ("[C]ommon liability issues such as conspiracy or monopolization have, almost invariably, been held to predominate over individual issues."); 7AA Charles Alan Wright, Arthur Miller & Mary Kay Kane, FEDERAL PRACTICE AND PROCEDURE, § 1781 (3d ed.) ("[W]hether a conspiracy exists is a common question that is thought to predominate over the other issues in the case and has the effect of satisfying the first prerequisite in Rule 32(b)(3).").

As recently stated in *CRT I*, courts "have stressed that price-fixing cases are appropriate for class certification because a class-action lawsuit is the most fair and efficient means of enforcing the law where antitrust violations have been continuous, widespread, and detrimental to as yet unidentified consumers." 308 F.R.D. at 612 (quoting *In re TFT–LCD I*, 267 F.R.D. at 592). "Courts therefore 'resolve doubts in these actions in favor of certifying the class.'" *CRT I*, 308 F.R.D. at 612 (quoting *Rubber Chems.*, 232 F.R.D. at 350). Other courts agree. *See In re Vitamins Antitrust Litig.*, 209 F.R.D. 251, 268 (D.D.C. 2002) (finding common issues will predominate with conspiracies at issue). Allegations of "a per se violation of the antitrust laws are exactly the kind of allegations which may be proven on a class-wide basis through common proof." *In re Southeastern Milk*

Antitrust Litig., No. 2:08-MD-1000, 2010 WL 3521747, at *10 (E.D. Tenn. Sept. 7, 2010). "Courts have held that the existence of a conspiracy is the predominant issue in price fixing cases, warranting certification of the class even where significant individual issues are present." *Id*. at *9 (quotation marks and citations omitted). "As a rule of thumb, a price fixing antitrust conspiracy model is generally regarded as well suited for class treatment." *In re Catfish Antitrust Litig.*, 826 F. Supp. 1019, 1039 (N.D. Miss. 1993); *see also Hyland v. Homeservices of Am., Inc.*, No. 3:05-CV-612-R, 2008 WL 4858202, at *4 (W.D. Ky. Nov. 7, 2008).

In this case, the litigation and trial will focus overwhelmingly on common issues including: whether Defendants colluded; which Defendants colluded; whether the conduct generally resulted in overcharges; and the measure of aggregate damages. Neither Plaintiffs nor Defendants will focus on which Class members were injured and which were not. *See Torres*, 835 F.3d at 1141 (noting a "class defendant's interest was 'only in the total amount of damages for which it will be liable,' not 'the identities of those receiving damage awards'") (quoting *Leyva*, 716 F.3d at 513-14).

2. Common Issues Predominate for Each Component of the Case.

Although the predominance of common issues in the case as a whole is sufficient to establish predominance under Rule 23(b), Plaintiffs also establish predominance by showing that they will attempt to prove the various components of their case—violation; causation and impact; and damages—using common evidence.

a. Evidence of the alleged antitrust violation is common to the class.

Proof of an antitrust violation often focuses on a defendant's conduct and is

therefore entirely common. *Amchem*, 521 U.S. at 625; *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 336 (3d Cir. 2011) (*en banc*).

b. Common evidence shows impact to the class.

Particularly when common evidence will be used to show defendants' violation of law, courts have held that common issues predominate in antitrust cases if plaintiffs can establish "common impact," that is, that they will rely on common evidence in attempting to show widespread harm to a class. *See, e.g.*, *Torres*, 835 F.3d at 1138; *High-Tech*, 985 F. Supp. 2d at 1192; *In re Linerboard Antitrust Litig.*, 203 F.R.D. 197, 220 (E.D. Pa. 2001); *Thomas & Thomas*, 209 F.R.D. at 166; *Rubber Chems.*, 232 F.R.D. at 352-53. Evidence establishes common impact if it is common to the class and supports the conclusion that Defendants' conduct caused injury (or fact of damage) that is widespread across class members. *Messner v. Northshore Univ. Healthsystem*, 669 F.3d 802, 818-19 (7th Cir. 2012); *High-Tech*, 985 F. Supp. 2d at 1192; *Thomas & Thomas*, 209 F.R.D. at 166-67.

To show that Plaintiffs have evidence capable of establishing that overcharges were experienced broadly across the members of the Class—*i.e.*, to establish "common impact"— Plaintiffs use a standard two-step impact analysis. *See High-Tech*, 985 F. Supp. 2d at 1206; *Castro v. Sanofi Pasteur Inc.*, 134 F. Supp. 3d 820, 847 (D.N.J. 2015). The first step relies on common evidence capable of showing that the alleged antitrust violation inflated prices *in general*. *High-Tech*, 985 F. Supp. 2d at 1206. The second step involves common evidence capable of showing that the price inflation had a *widespread* effect across Class members. *Id*. *See also Nitsch*, 315 F.R.D. at 297-98 (granting class certification where plaintiffs' expert analyses proceeded in two steps, first showing that "classwide evidence was capable of showing that the alleged conspiracy suppressed compensation of class members generally," then that "economic studies and theory, documentary

evidence, and statistical analyses were capable of showing that this compensation suppression had widespread effects on all class members"); *Castro*, 134 F. Supp. 3d at 847 (noting that the "two-step method to prove antitrust impact is not novel").

Several legal principles apply to both steps of the analysis. First, to establish common impact, consistent with *Amgen*, Plaintiffs need merely offer common proof *capable* of showing widespread harm to the Class; they need not *prove* classwide harm. *See, e.g.*, *High-Tech*, 985 F. Supp. 2d at 1192 ("[T]he Court is not tasked at this phase with determining whether Plaintiffs will prevail on the[ir] theories. Rather, the question is narrower: whether Plaintiffs have presented a sufficiently reliable theory to demonstrate that common evidence can be used to demonstrate impact."). *TFT-LCD II*, 267 F.R.D. at 311-13 ("Plaintiffs need only advance a plausible methodology to demonstrate that antitrust injury can be proven on a class-wide basis." (citations omitted)).

Second, Plaintiffs can establish common impact by showing widespread harm; they need not show harm to all Class members. As the Ninth Circuit recently explained in *Torres*, "pursuant to Rule 23, 'the court's task at certification is to ensure that the class is not "defined so broadly as to include a great number of members who for some reason could not have been harmed by the defendant's allegedly unlawful conduct."'" 835 F.3d at 1138 (quoting 1 NEWBERG ON CLASS ACTIONS §2:3 (5th ed.). Certification is appropriate so long as a class does not contain "large numbers of class members who were never *exposed* to the challenged conduct to begin with." *Torres*, 835 F.3d at 1136 (emphasis in original) (citing, *inter alia*, *Mazza*, 666 F.3d at 596).[7]

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[7] *See Kohen v. Pac. Inv. Mgmt. Co. LLC*, 571 F.3d 672, 677 (7th Cir. 2009) (class

Further, although individual class members' injuries need not be shown, a class member's payment of a single overcharge—of whatever amount—is sufficient to establish impact. *Lidoderm*, 2017 WL 679367 at *21; *In re Nexium Antitrust Litig.*, 777 F.3d 9, 27 (1st Cir. 2015) ("Paying an overcharge caused by the alleged anticompetitive conduct on a single purchase suffices to show—as a legal and factual matter—impact or fact of damage."); *see also Paper Sys., Inc. v. Nippon Paper Indus. Co.*, 281 F.3d 629, 633 (7th Cir. 2002) ("The monopoly overcharge is the excess price at the initial sale"). This is true even if a purchaser made additional purchases not subject to an overcharge, *Nexium*, 777 F.3d at 27-28—indeed, even if the purchaser enjoyed some offsetting benefits from the conduct at issue. *Lidoderm*, 2017 WL 679367 at *21; *Nexium*, 777 F.3d at 27.

c. Common Evidence of General Price Inflation.

As to the first step, Plaintiffs show that Defendants' conspiracy had a *general tendency* to harm the Class members—here, by raising prices above competitive levels. Plaintiffs' evidence includes documents, testimony, and various forms of economic analysis. The very purpose of Defendants' conspiracy was to raise and maintain the prices of packaged tuna above competitive levels. Gil-Montllor Decl., at 37, 44. Internal communications, as well as testimony in the ensuing litigation, confirm that Defendants' aim was to inflate their prices. *Id*. Specifically, Defendants' anticompetitive conduct has resulted in Bumble Bee's pleading guilty to illegal price fixing with the aim and effect of inflating prices above competitive levels. *Id*. at 5-6.

Dr. Michael A. Williams, an expert economist who has provided testimony

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may contain uninjured members); *Nexium*, 777 F.3d at 22 (same); *Messner*, 669 F.3d at 818 (same).

in support of Plaintiffs' motion for class certification, has tested whether Defendants inflated their prices for Large-Sized Packaged Tuna during the Class Period. Relying on common evidence, he concludes that they did. Dr. Williams performed regression analyses to assess whether the prices Defendants charged during the Class Period were inflated above competitive levels as a result of the Defendants' conspiracy and whether those overcharges were passed on to Class members. Williams Rpt. at ¶¶ 66-82. He finds that Defendants imposed overcharges during the Class Period ranging from 15.3% to 18.6%. *Id*. at ¶ 78, Table 3. He further finds that the distributors from which the Class members made purchases passed along between 92% and 113% of those overcharges. *Id*. at ¶ 81, Table 4. This econometric analysis provides Class members additional common evidence that Defendants' price-fixing conspiracy inflated prices to Class members during the Class Period in general.

d. Common Evidence of Widespread Impact.

As to the second step, Plaintiffs show the resulting impact was *widespread* across Class members—here, that the conspiracy inflated prices above competitive levels across Class members. Because this is an indirect purchaser class action, proof of widespread harm to Class members involves evidence of both: (1) *Overcharges*: Defendants imposed overcharges widely across sales to the six distributors from which the Class members bought; and (2) *Pass-through*: the distributors passed on the overcharges they paid widely across their sales to Class members. *See, e.g. In re Optical Disk Drive Antitrust Litig*., No. 3:10-md-2143 RS, 2016 WL 467444, at *7 (N.D. Cal. Feb. 8, 2016).

To show the widespread nature both of the overcharges and of their pass-through, Plaintiffs rely on two methods: (1) analyses of the effects of Defendants' conduct on various categories of sales and of the structure of the market support

the conclusion that Defendants' conduct had a classwide effect;[8] and (2) a model assessing compensation for each Class member that purchased from two of the distributors (Sysco and US Foods) shows impact to over 99% of them, and evidence demonstrates that this analysis provides a conservative estimate for the overcharge percentage for customers from the other distributors.[9] Each method

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[8] *See, e.g.*, *Nitsch*, 315 F.R.D. at 297–98 (as part of second step of common impact analysis, plaintiffs' expert analyses showed that "economic studies and theory, documentary evidence, and statistical analyses were capable of showing that this compensation suppression had widespread effects on all class members"); *High-Tech*, 985 F. Supp. 2d at 1206 (relying on documentary and quantitative evidence about the nature of the market suggesting effect on the class would be widespread in certifying a class); *In re Cathode Ray Tube (CRT) Antitrust Litig.*, MDL No. 1917, 2013 WL 5429718, at *13-*20 (N.D. Cal. June 20, 2103) (concluding indirect purchaser class in antitrust case should be certified based on economic theory, market characteristics, and sampling of aggregate and average data to establish overcharges and pass-through) (hereinafter "*CRT II*"), *adopted by In re Cathode Ray Tube (CRT) Antitrust Litig.*, MDL No. 1917, 2013 WL 5391159 (N.D. Cal. Sept. 24, 2013) (hereinafter "*CRT III*"); *TFT-LCD I*, 267 F.R.D. at 600-06 (relying on market characteristics, regression showing overcharges to direct purchasers, and pass-through analysis based on averaged and aggregate data to certify class of indirect purchasers).

[9] *See In re Air Cargo Shipping Servs. Antitrust Litig.*, MDL No. 1775, 2014 WL 7882100, at *55 (E.D.N.Y. Oct. 15, 2014) (observing that defendants did not even dispute that an analogous "'customer model' is methodologically capable of showing the percentage of class members impacted, nor do they dispute that 95.7%

relies on common evidence to demonstrate widespread impact.

i. Under his first method, Dr. Williams analyzed the types of sales and structure of the market at issue.

Analyzing common evidence, Dr. Williams determined that sales to Class members in various categories were subject to overcharges and pass-through at very high rates. Dr. Williams analyzed the overcharges Defendants imposed by product, by Large Distributor, by state, and by combinations of individual Defendants and individual Large Distributors. He found that at least 95.7% to 100% of the sales during the Class Period to the six distributors were subject to a positive and statistically significant overcharge. *See* Williams Rpt. at ¶ 86 & Figure 2. Dr. Williams also analyzed the pass-through of overcharges by product and by state for each Large Distributor. He found that at least 96.5% to 100% of sales during the Class Period to Class members were subject to a positive and statistically significant pass-through rate. *Id*. at ¶ 87 & Figure 3. The very high rates of overcharge and pass-through in these categories provide a strong basis for

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would be sufficiently 'classwide' for purposes of common proof"); *In re Chocolate Confectionary Antitrust Litig.*, 289 F.R.D. 200, 221 (M.D. Penn. 2012) (certifying class based on analogous customer impact model relying on sampling); *In re Domestic Drywall Antitrust Litig.*, 322 F.R.D 188, 217 (E.D. Penn. 2017)(certifying class where similar econometric model showed 98% of class members impacted *Korean Ramen I*, 2017 WL 235052, at *6 (certifying indirect purchaser class based, in part, on a multiple regression model confirming that 98% of direct purchasers were impacted and additional evidence from sampling of a high pass-through rate of those overcharges to indirect purchasers).

concluding that the Defendants' conduct imposed at least one overcharge on all or nearly all Class members. These results are particularly robust because, unlike other cases in which courts have certified classes of indirect purchasers, plaintiffs here do not rely on limited sampling to establish overcharge and pass-through rates but rather rely on data from each of Defendants and each of the six distributors.[10]

Relatedly, Dr. Williams's market analysis here is more straightforward and reliable than in other cases certifying indirect purchaser classes for two additional reasons. First, Plaintiffs here purchased the product in the same package in which it was originally sold, not after it was altered or incorporated in another product, simplifying the analysis of the pass-through rate.[11] Second, Plaintiffs here bought

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[10] *CRT II*, 2013 WL 5429718, at *17-*18, (quoting *TFT-LCD I*, 267 F.R.D. at 605) (relying on aggregate evidence and sampling to establish common impact and predominance for certification of indirect purchaser class); *Korean Ramen I*, 2017 WL 235052, at *5-*8 (using aggregate data for overcharge rate and sampling for pass-through rate in certifying indirect purchaser class in antitrust case).

[11] *See B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal. App. 3d 1341, 1352-53 (1987) (noting common impact is particularly likely when a product is resold in the same form it was originally sold, giving rise to a presumption of widespread impact); *In re Flash Memory Antitrust Litig.*, No. C 07-0086 SBA, 2010 WL 2332081, at *13 (N.D. Cal. June 9, 2010) (discussing *B.W.I. Custom Kitchen* and noting presumption of widespread impact is appropriate but only if where product remained in original form); *see also Fond Du Lac Bumper Exch., Inc. v. Jui Li Enter. Co.*, No. 09-CV-00852, 2012 WL 3841397, at *3 (E.D. Wis. Sep. 5, 2012) ("Since [the price-fixed goods] travel down the chain of distribution substantially

directly from the direct purchasers, limiting the chain of distribution to two levels and, again, simplifying the pass-through analysis. *Korean Ramen I*, 2017 WL 235052, at *19 (noting common impact is more easily established when the chain of distribution is relatively simple to class members and the product is sold only on a "standalone basis" rather than also "bundled" in other products).[12] Indeed, under California law, when a good is subject to price fixing and indirect purchasers bought the good in unmodified form, there is a presumption of antitrust impact. *TFT-LCD I*, 267 F.R.D. at 600-01; *SRAM II*, 264 F.R.D. at 612; *In re Cipro Cases I and II*, 121 Cal. App. 4th 402, 418 (2004); *B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1351-53. Courts have held that presumptions in general—and the presumption of impact in indirect purchaser antitrust cases in particular—are

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unchanged, the price charged by the manufacturer will largely determine the price paid by the end user.").

[12] Courts have found that common impact is established in matters much more complex than the two-level distribution chain here. *See TFT-LCD I*, 267 F.R.D. at 604 (certifying a class because plaintiffs could show the pass-through rate was measurable, "regardless of the path or the number of steps the panel went through from defendants to class members."); *SRAM II*, 264 F.R.D. at 613-15 (rejecting defendants' claim that the SRAM distribution chain is "too complex from which to discern evidence of pass-through"); *see also Microsoft I-V Cases*, 2002-2 Trade Cas. (CCH) ¶ 88,563, 2000 WL 35568182 (Cal. Sup. Ct. Aug. 29, 2000) (Docket No. 1024-10, Ex. 9) (recognizing that the case presented complexities from multiple products and distribution channels, but that "the court is not persuaded that a comprehensive analysis of the issues cannot be made within the context of properly managed trial proceedings").

"substantive" and govern in federal proceedings applying state substantive law under the *Erie* doctrine. *Johnston v. Pierce Packing Co*., 550 F.2d 474, 476 n.1 (9th Cir. 1977); *TFT-LCD I*, 267 F.R.D. at 600; *SRAM II*, 264 F.R.D. at 612; *Computer Econ., Inc. v. Gartner Group, Inc*., 50 F. Supp. 2d 980, 990 (S.D. Cal. 1999).[13]

Further, the distributors who resold the Large-Sized Packaged Tuna to Class members operate in a very competitive industry, Williams Rpt. at ¶¶ 91-96, leaving them small profit margins and forcing them to pass on to their customers the higher prices they paid as a result of Defendants' overcharges. *Id*. at ¶ 97. Their inability to absorb overcharges without operating at a loss further confirms that the effect of Defendants' conduct was widespread across Class members. *Id*.; *see also TFT-LCD I*, 267 F.R.D. at 601-02 (noting pass-through rate is higher in highly competitive markets, supporting finding of common impact). So does the practice of several of the distributors—Costco, Sam's Club, and Walmart—not to engage in virtually any individualized price negotiations or other forms of price discrimination. Williams Rpt. at ¶ 98. That lack of price variation with respect to all or almost all of the distributors' customers further contributes to the widespread effect of Defendants' conduct on Class members. *Id*.

Courts have found the above sort of common evidence sufficient to support a finding of widespread effect, common impact, and predominance in indirect purchaser antitrust actions. *See*, e.g., *Korean Ramen I*, 2017 WL 235052, at *16, 19-20 (expert's analysis based on anecdotal evidence and econometric analysis are

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[13] Notably, under "the prevailing view, price-fixing affects all market participants, creating an inference of class-wide impact even when prices are individually negotiated." *Dow Chem. Co. v. Seegott Holdings, Inc*., 768 F.3d 1245, 1254 (10th Cir. 2014).

a "reliable and accepted source of classwide proof of impact"), *Optical Disk Drive*, 2016 WL 467444, at *7 (expert's analysis presented adequate explanation for why classwide impact would have existed, including means for testing data and calculating overcharges); *CRT I*, 308 F.R.D. at 629 (expert's report, supported by both documentary facts and industry data, and including econometric analysis, is "well established as a means of providing classwide proof of antitrust injury and damages"); *TFT-LCD I*, 267 F.R.D. at 606 (expert's report was supported by transactional and industry data and "courts have accepted multiple regression analyses as means of proving antitrust injury and damages on a class-wide basis."); *SRAM II*, 264 F.R.D. at 614 (experts' analyses, including regression models, are "plausible methodologies that will be used to perform quantitative analyses to demonstrate class-wide injury."). Dr. Williams, however, undertook another form of analysis that is even more rigorous.

ii. Dr. Williams' second method of analysis—testing the scope of impact on individual Class members—confirmed that both overcharges and their pass-through widely impacted the Class.[14]

Specifically, Dr. Williams was able to assess the percentage of Class members injured by Defendants' conduct on a Class-member-by-Class-member basis for two of the distributors, Sysco and US Foods. Williams Rpt. at ¶¶ 99-108.

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[14]*See Air Cargo*, 2014 WL 7882100, at *55 (granting class certification based on this model); *Chocolate Confectionary*, 289 F.R.D. at 221 (same); *Domestic Drywall*, 2017 WL 3623466, at *27 (same *Korean Ramen I*, 2017 WL 235052, at *6 (same).

He used his regression analyses to determine the prices each of the Class members would have paid Sysco and US Foods if not for the conspiracy and to compare those amounts to the prices the Class members actually paid. *Id*. He found that more than 99% of Class purchasers from Sysco (99.3%) and US Foods (99.5%) paid an overcharge. *Id*. at ¶¶ 101-02. He further explained that the small percentage of Class purchasers who did not appear to have paid an overcharge in fact likely did pay one; the outliers were small buyers, and statistical noise—rather than the absence of an overcharge—likely explains why the data are unable to show they were harmed. *Id*. at ¶ 101, n. 99 & ¶ 102, n. 100.

The limited nature of the data that Costco, Dot Foods, Sam's Club and Walmart provided did not allow for a similar analysis. *Id*. at ¶ 99, n. 97. However, Dr. Williams concludes for various reasons that Sysco and US Foods purchasers provide an appropriate benchmark for the percentage of impact on purchasers from the other distributors, that is, the percentage of impact on the other distributors is likely to be higher than 99%. *Id*. at ¶ 107. First, as discussed above, his econometric analysis of different categories of sales and his analysis of the structure of the market confirm that Defendants' conduct would cause virtually all Class members to have paid an overcharge. *Id*. at ¶ 105. So does evidence that the distributors all operate in highly competitive industries with narrow profit margins, forcing them to pass on the overcharges they paid to their customers, the Class members. *Id*. at ¶¶ 91-98, 108.

Second, all else equal, the less a distributor varies its prices and the higher the pass-through it imposes on its customers, the higher the percentage of its customers are likely to have paid an overcharge. *Id*. at ¶¶ 106. One could imagine a class member who negotiates such a low price that it compensates entirely for the passed-on overcharge caused by Defendants' antitrust violations. The reason is that a Class member may be able to escape overcharges by paying a lower price than

other customers as a result of price variation, sometimes even by a large enough amount to compensate for the passed-on overcharge it otherwise would have paid. *Id*. But the less a distributor varies its prices, and the higher the percentage of the overcharge it passes on to its customers, the less frequently the Class members would have been able to avoid paying overcharges. *Id*. Here, Costco, Sam's Club, and Walmart all had lower price variation than Sysco and US Foods. *Id*. at ¶¶ 98, 107. Further, Costco, Dot Foods, Sam's Club, and Walmart all had higher pass-through rates than Sysco and US Foods. *Id*. at ¶ 81 & Table 4 (Sysco pass-through rate of 92%; US Foods 92%; Dot Foods 94%; Costco 101%; Sam's Club 103%; Walmart 113%); ¶ 107. As a result, the percentage of impact for the distributors other than Sysco and US Foods would also likely be higher than 99%.

Third, Sysco and US Foods are the largest distributors. *Id*. at ¶ 14. Together they are responsible for 62% of the sales to the Class members. *Id*. As a result, the analysis of their data provides powerful evidence of classwide impact in general. *See Korean Ramen I*, 2017 WL 235052, at *19 (relying on average pass-through rates from "an admittedly small sampling of resellers" to show widespread impact on indirect purchasers); *Air Cargo*, 2014 WL 7882100, at *56 (holding analysis of percentage of impact that omitted data for 100,000 class members was sufficient to draw inference of widespread impact to Class as a whole); *Chocolate Confectionary*, 289 F.R.D. at 212-13, 221-22 (relying on data from just a single customer to analyze percentage of impact and eliminating from that data various sales that were not susceptible to analysis or were outliers); *CRT III*, 2013 WL 5391159, at *8 (approving use of sampling in certifying indirect purchaser class action).

There is a final reason that this analysis understates the percentage of Class members that paid overcharges as a result of Defendants' conduct. Williams Rpt. at ¶ 103. Some Class members purchased Large-Sized Packaged Tuna from more

than one of the six distributors. *Id*. If they did, then even if they did not pay an overcharge to one of the distributors, they very likely paid an overcharge to a different one. Dr. Williams' analysis of the Sysco and US Foods data produces impact percentages greater than 99% without taking that phenomenon into account. *Id*. at ¶¶ 101-02. As a result, his analysis likely understates the percentage of Class members that paid an overcharge, which is probably above 99% overall. *Id*. at ¶ 103.

The above Class member by Class member analysis showing almost 100% of the Class paid an overcharge is often not feasible in antitrust cases—in part because of limitations in the available data—but when it is feasible, it provides an extraordinarily rigorous basis for establishing common impact and predominance.

In sum, common evidence demonstrates general price inflation, and each of Dr. Williams' two methods establishes the widespread nature of the impact of those price increases on the Class. Plaintiffs can establish common impact and—particularly in light of the common evidence indicating defendants' violation and the Class's aggregate damages—thereby establish that common issues predominate.

e. Common Issues Predominate Regarding Aggregate Damages

Courts hold that the amount of damages Defendants must pay is a common issue if plaintiffs demonstrate that they can use common evidence to calculate aggregate class damages. *See Lidoderm*, 2017 WL 679367, at *15 (approving use of aggregate damages) (citing *Meijer, Inc. v. Abbott Labs*, No. C 07-5985 CW, 2008 WL 4065839, at *7 (N.D. Cal. Aug. 27, 2008)); *see also Nexium*, 777 F.3d at 19 (approving aggregate measure of classwide damages); *In re Cardizem CD Antitrust Litig.*, 200 F.R.D. 297, 324 (E.D. Mich. 2001) ("As observed by a leading

commentator on class actions: 'aggregate computation of class monetary relief is lawful and proper.'") (citation omitted).

Courts have further held that plaintiffs in price-fixing cases "are not required to supply a precise damage formula at the class certification stage." *SRAM I*, 2008 WL 4447592, at *6. Plaintiffs need only provide a methodology for calculating aggregate damages that is "not so insubstantial as to amount to no method at all." *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, 2006 WL 1530166, at *10 (N.D. Cal. June 5, 2006) (hereinafter "*DRAM*"); *see also Comcast Corp. v. Behrend*, 569 U.S. 27, 35 (2013) (confirming that damages "[c]alculations need not be exact") (citing *Story Parchment v. Paterson Parchment Paper*, 282 U.S. 555, 563 (1931)). It is also well established that any need to perform individual damages calculations will not defeat class certification. *See Torres*, 835 F.3d at 1136 ("The presence of individualized damages calculations. . . does not defeat predominance." (citing *Leyva*, 716 F.3d at 513–14)); *see also Pulaski & Middleman, LLC v. Google, Inc.*, 802 F3d 979, 987 (9th Cir. 2015) (same); *Yokoyama v. Midland Nat'l Life Ins. Co.*, 504 F3d 1087, 1093 (9th Cir. 2010) (same).

Here, Plaintiffs have not merely proposed a methodology for calculating the aggregate Class damages. Dr. Williams has calculated those damages using common evidence, concluding that the members of the proposed Class have paid $37,495,818 in overcharges. *See* Williams Rpt. at ¶ 78 & Table 3; *id*. at ¶ 109. Plaintiffs' ability to prove aggregate damages to the Class further indicates that common issues predominate here. They have more than met the standard that they provide a means to determine aggregate damages that is "not so insubstantial as to amount to no method at all." *DRAM*, 2006 WL 1530166, at *10).

3. Similarities in the Applicable Law Confirm Predominance.

In this case, some of the named Plaintiffs and some of the Class members

made purchases in states other than California. That is not a bar to treating them all in this single action, as long as the applicable laws of those states are *relatively* similar, as they are here. The Ninth Circuit described the appropriate analysis in *Mazza*, 666 F3d at 590, explaining the inquiry is whether a state law's difference is "material," meaning whether it would produce a different outcome in the litigation. If there is no material difference—and Plaintiffs show below there isn't one—then there is no bar to proceeding on behalf of Plaintiffs and Class Members from those states.

Other Circuits take the same approach. *Nexium*, 777 F.3d at 14 (affirming certification of a nationwide class of indirect purchasers pursuing claims "under the antitrust and consumer protection laws of 24 states and the District of Columbia");[15] *Sullivan*, 667 F.3d at 302 ("Where 'a sufficient constellation of common issues binds class members together,' differences in state law treatment of indirect purchaser claims likely fall into a handful of clearly discernible statutory schemes." (citation omitted));[16] *Klay v. Humana, Inc.*, 382 F.3d 1241, 1262 (11th

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[15] *Accord Waste Mgmt. Holdings, Inc. v. Mowbray*, 208 F.3d 288, 296 (1st Cir. 2000) (rejecting argument that variations in twenty states' laws concerning reliance, waiver, and statutes of limitations defeated predominance, holding that "as long as a sufficient constellation of common issues binds class members together, variations in the sources and application of statutes of limitations will not automatically foreclose class certification under Rule 23(b)(3)").

[16] *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 315 (3d Cir. 1998) (denying a class settlement objector's arguments, and noting that "[c]ourts have expressed a willingness to certify nationwide classes on the ground that relatively minor differences in state law could be overcome at trial by grouping

Cir. 2004) ("[I]f the applicable state laws can be sorted into a small number of groups, each containing materially identical legal standards," then certification of subgroups "embracing each of the dominant legal standards can be appropriate.").

B. A Class Action Is Superior to Individual Actions.

Class treatment is superior to many hundreds of individual claims in an antitrust case where common issues predominate. *TFT-LCD II*, 267 F.R.D. at 314 ("if common questions are found to predominate in an antitrust action . . . courts generally have ruled that the superiority prerequisite of Rule 23(b)(3) is satisfied") (quotation omitted). Class members' individual damages, even after mandatory trebling, are insufficiently large to warrant individual litigation. *Id.* at 314–315; *see also Wolin*, 617 F.3d at 1175-76. Class treatment will also be more manageable and efficient than thousands of individual actions litigating the same issues with the same proof. *See, e.g.*, *In re Ethylene Propylene Diene Monomer (EPDM) Antitrust Litig.*, 256 F.R.D. 82, 104 (D. Conn. 2009); *Greene*, 2017 WL 4158605, at *6 ("Because the Court finds it would be more efficient and consistent to pool these claims together, the superiority requirement has been satisfied"). Any trial here will focus on the same questions and the same evidence, whether it involves a single Plaintiff or all Class members. Either Defendants fixed prices or they did not; either they violated the antitrust laws or they did not; either they inflated prices

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similar state laws together and applying them as a unit." (citing *In re School Asbestos Litig.*, 789 F.2d 996 (3d Cir. 1986))). *But see Grandalski v. Quest Diagnostics Inc.*, 767 F.3d 175, 183 (3d. Cir. 2014) (affirming denial of certification of multistate class where "[n]o effort has been made to demonstrate how Plaintiffs' claims of deception through overbilling could be proven under the statutes' varying elements of reliance, state of mind, and causation, to name a few").

or they did not.

Moreover, if individual Class members cannot afford to bring claims on their own, that weighs in favor of certifying a class, not against it. *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1128 (9th Cir. 2017) (citing *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 663–64 (7th Cir. 2015)); *TFT-LCD I*, 267 F.R.D. at 608; *Sobel*, 291 F.R.D. at 544 (quoting *Wolin*, 617 F.3d at 1176 ("[A] class action is particularly appropriate where, as here, the alternative involves class members filing hundreds of individual lawsuits that could involve duplicating discovery and costs that exceed the extent of the proposed class members' individual injuries.'")). This case will proceed best on a class basis.

V. THE COURT SHOULD CERTIFY THE CLASS FOR CLAIMS CALIFORNIA SUBSTANTIVE LAW

CFPs seek to certify a Class consisting of purchasers from 27 *Illinois Brick* "Repealer" States and the District of Columbia who assert claims under California's Cartwright Act. Certification of a multistate class under California law comports with both due process and California's choice of law rules. *See Mazza*, 666 F.3d at 589-90. Multiple district courts within the Ninth Circuit have recently certified multistate classes under the Cartwright Act where, as here, some of the conspiratorial, price-fixing conduct occurred in California or some of the Defendants were headquartered in the state or overseas. *See, e.g.*, *Korean Ramen I*, 2017 WL 235052, at *23 (certifying 24-jurisdiction class under California law); *Optical Disk Drive*, 2016 WL 467444, at *14 (same).[17] The same result is warranted here.

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[17] Several courts have also certified nationwide classes under other California laws. *See, e.g.*, *In re POM Wonderful LLC Mktg. & Sales Practices Litig.*, No. ML 10-

A. Application of the Cartwright Act to Out-of-State Claims Satisfies Due Process.

California's "Cartwright Act can be lawfully applied without violating a defendant's due process rights when more than a *de minimis* amount of that defendant's alleged conspiratorial activity leading to sale of price-fixed goods to plaintiffs took place in California." *AT&T Mobility LLC v. AU Optronics Corp.*, 707 F.3d 1106, 1113 (9th Cir. 2013). Where, as here, a "defendant's conspiratorial conduct is sufficiently connected to California, and is not 'slight and casual,'" the application of California law is "neither arbitrary nor fundamentally unfair," and does not violate that defendant's due process rights. *Id.* at 1107.

Defendants' California contacts are substantial. First, Defendants committed many of the key conspiratorial acts in California. For example, then-Chief Executive Officers of defendants met in California. Gil-Montllor Decl. at 32. Indeed, two Bumble Bee executives have admitted their criminal antitrust violations occurred largely in California. Gil-Montllor Decl. at 5-6.

Second, the majority of the Defendants are either based in California (and have an expectation that California law will apply) or overseas (and have no expectation about the application of one's state laws over another). *In re Lithium Ion Batteries Antitrust Litig.*, No. 13-md-2420-YGR, 2017 U.S. Dist. LEXIS

02199, 2012 WL 4490860 (C.D. Cal. Sept. 28, 2012) (applying California law to a nationwide class); *Bruno v. Eckhart Corp.*, 280 F.R.D. 540, 543, 547 (C.D. Cal. 2012) (declining to decertify a class after *Mazza*, and stating that "courts routinely apply the California consumer protection laws at issue in *Mazza* . . . to nationwide classes"); *Pecover*, 2010 WL 8742757, at *25-26 (certifying nationwide class of indirect purchasers under California law)

57340, at *94 (N.D. Cal. Apr. 12, 2017); *Optical Disk Drive*, 2016 WL 467444, at *14; *Pecoverb*, 2010 WL 8742757, at *25-26. Bumble Bee and COSI (Tri-Union and TUNAI) are all headquartered in San Diego. Bumble Bee's Answer to CFP 3d Am. Compl. ¶ 27; COSI's Answer to Sysco Compl. ¶ 41. Lion Capital and Big Catch operate an office in Los Angeles, which also serves as the headquarters for Lion Americas. *Lion Capital Americas, Inc.*, Bloomberg, https://www.bloomberg.com/profiles/companies/0058736D:US-lion-capital-americas-inc. (last visited May 29, 2018) Key individuals, including Christopher Lischewski, are residents of San Diego. *Chris Lischewski*, Business Insider, http://www.businessinsider.com/author/chris-lischewski (last visited May 29, 2018). TUG is based in Thailand. TUG's Answer to CFP 2d Am Compl. ¶ 28. And Starkist is a wholly-owned subsidiary of Dongwon, located in Korea. Dongwon Ind. Co., Ltd.'s Answer to CFP 3d Am. Compl. ¶ 63, 71.

Third, Defendants maintain additional contacts with the state. COSI and Bumble Bee processed substantial amounts of tuna product at Santa Fe Springs, California. Bumble Bee's Answer to CFP 3d Am. Compl. ¶ 94.

Taken together, the above anticompetitive conduct within California and Defendants' contacts with California "establish[] a 'significant aggregation of contacts, creating state interests, such that choice of [California] law is neither arbitrary nor fundamentally unfair.'" *AT&T Mobility*, 707 F.3d at 1113 (quoting *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 312-13 (1981)).

B. Defendants Cannot Meet Their Burden to Show California Law Should Not Apply to Out-of-State Purchases.

Having demonstrated that application of California law to out-of-state purchasers is constitutional, the "burden shifts to [defendants] to demonstrate 'that foreign law, rather than California law, should apply to class claims.'" *Mazza*, 666 F.3d at 590 (quoting *Wash. Mut. Bank v. Superior Court*, 24 Cal. 4th 906, 921

(2001)); *see also Keilholtz v. Lennox Hearth Prods. Inc.*, 268 F.R.D. 330, 340 (N.D. Cal. 2010) (If due process is satisfied, "the Court *presumes* that such law applies to the claims of the . . . class unless Defendants meet the '*substantial burden*' of showing that foreign law, rather than California law, applies." (emphasis added)). To meet their substantial burden under California choice of law rules, Defendants must show: (1) *material* differences between the laws, meaning "they make a difference in this litigation;" (2) that the difference creates a "true conflict" between the interests of California and those of the other states; and (3) that the foreign state's interests would be more significantly impaired by the application of California law than vice versa. *Mazza*, 666 F.3d at 590 (quoting *Wash. Mutual Bank*, 24 Cal. 4th at 919, and citing *McCann v. Foster Wheeler LLC*, 48 Cal. 4th 68, 81-82 (2010)) (emphasis added). Defendants cannot satisfy any of these necessary steps in the choice of law analysis.

As shown in Appendix A, each of the 28 jurisdictions at issue prohibits naked restraints of trade such as price-fixing conspiracies. *See* Appendix A. Further, in each of those jurisdictions, indirect purchasers have standing to sue for violations of antitrust or consumer protection statutes based on the type of conduct challenged here. *Id.* Thus, there is no material difference between California law and foreign law. *Korean Ramen I*, 2017 WL 235052, at *22 ("Defendants have not identified any conflicts to applying the Cartwright Act to the 24 Illinois Brick repealer jurisdictions, and therefore class certification for those jurisdictions is appropriate.") (citing *Optical Disk Drive*, 2016 WL 467444, at *14 (certifying

class under the Cartwright Act for indirect purchasers in *Illinois Brick* repealer states)).[18]

Even assuming there were a material difference between California and foreign law giving rise to a true conflict, California would have a superior interest to any other state in applying its law to Defendants' conduct. As described above, the majority of the Defendants are either headquartered in California (or overseas) or, at a minimum, maintain offices in the state. Moreover, much of the conspiratorial conduct occurred in, or emanated from, California. *See supra* Section V(A); *see also Korean Ramen II*, 2018 WL 1456618, at *3, n.2 (assuming a true conflict existed, California's interests would "trump the other states, given the California domicile of [two defendants]"); *Pecover*, 2010 WL 8742757, at *25-26.

In sum, under California's choice of law analysis, it is proper to certify a Cartwright Act Class of purchasers from the *Illinois Brick* Repealer states. Where a

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[18] *See also In re Korean Ramen Antitrust Litig.*, No. 13-cv-04115-WHO, 2018 WL 1456618, at *3 n.2 (N.D. Cal. Mar. 23, 2018) (hereinafter "*Korean Ramen II*") ("[A]ny conflicts as to statutes of limitations, pass-on defense, treble damages, and procedural prerequisites are not material *in this case* where the defendants are foreign companies or domiciled in California. And if considered any of the 'conflicts' identified by defendants 'material,' I would continue to find that California's interests trump the other states, given the California domicile of [two defendants]." (citing *In re Qualcomm Antitrust Litig.*, 17-md-02773-LHK, 2017 WL 5235649 (N.D. Cal. Nov. 10, 2017), *In re Lithium Ion Batteries Antitrust Litig.*, No. 13-md-2420 YGR, 2017 WL 1391491, at *14 (N.D. Cal. Apr. 12, 2017), and *Optical Disk Drive*, 2016 WL 467444, at *14))).

single state's law is applied to the entire class, predominance "does not pose a barrier to class certification." *In re Hyundai and Kia Fuel Economy Litig.*, 881 F.3d 679, 692 (9th Cir. 2018) (quotation omitted); *Korean Ramen II*, 2018 WL 1456618, at *3 (certifying a class of indirect purchasers where the Cartwright Act applied to the claims of all members).

C. Alternatively, the Court Should Certify a Class Under to Pursue Claims under the Laws of Other States.

If the Court declines to apply California law to the claims of purchasers in other states, then CFPs seek certification of a class of purchasers from 10 states and the District of Columbia[19] based on the antitrust and consumer protection statutes of the states in which the named plaintiffs made their purchases. As demonstrated in Appendix A, there are no meaningful distinctions in the laws of these jurisdictions with respect to Defendants' liability for fixing prices of tuna. Although the Arkansas, Florida, and South Carolina claims are brought under consumer protection statutes, such laws are also violated by price fixing and allow for indirect purchaser standing. *See* Appendix A. Because the various state laws are so similar and do not deviate in any meaningful way, common questions will predominate over individual issues and the litigation may be managed fairly and efficiently. *See Hyundai*, 881 F.3d at 682.

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[19] These jurisdictions include California, District of Columbia, Florida, Iowa, Maine, Minnesota, New York, North Carolina, South Carolina, Tennessee and Wisconsin.

VI. THE COURT SHOULD APPOINT CLASS COUNSEL.

In addition to moving for class certification, Plaintiffs ask the Court to appoint class counsel to represent the certified Class. Under Rule 23(g), if the Court grants class certification, it should appoint class counsel who will "fairly and adequately" represent the Class. *See also Harris v. U. S. Physical Therapy, Inc.,* No. 2:10-cv-01508-JCM-VCF, 2012 WL 6900931, at *11 (D. Nev. Dec. 26, 2012) (counsel should be "qualified and competent" to represent the class). Plaintiffs have retained highly skilled counsel with extensive experience in prosecuting antitrust class actions. Proposed class counsel have vigorously pursued the interests of the proposed Class and will continue to do so. *See* Gil-Montllor Decl. at 50 (describing the work counsel have undertaken to date on behalf of the proposed Class). As a result, appointment of class counsel is appropriate under Rule 23(g).

VII. CONCLUSION.

For the foregoing reasons, the Court should certify the proposed Class and appoint class counsel.

Dated this 29th day of May 2018.

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APPENDIX A

***In re Packaged Seafood Products Antitrust Litigation*, No. MDL No. 2670**
Table of Authority for State Antitrust Claims and Indirect Purchaser Standing

Arizona	
Antitrust Law	Ariz. Rev. Stat. § 44-1402 (prohibits "[a] contract, combination or conspiracy between two or more persons in restraint of, or to monopolize, trade or commerce, any part of which is within this state").
Indirect Purchaser Standing	Ariz. Rev. Stat. § 44-1408(B) ("A person threatened with injury or injured in his business or property by a violation of this article may bring an action for appropriate injunctive or other equitable relief, damages sustained and, as determined by the court, taxable costs and reasonable attorney's fees"); *Bunker's Glass Co. v. Pilkington PLC*, 206 Ariz. 9, 12-19 (2003) (finding that indirect purchasers have standing under the Arizona Antitrust Act).
Arkansas	
Consumer Law	Ark. Code Ann. § 4-88-107(a)(10) (prohibits "[d]eceptive and unconscionable trade practices" including "[e]ngaging in any other unconscionable, false, or deceptive act or practice in business, commerce, or trade"); *In re Auto. Parts Antitrust Litig.*, 50 F. Supp. 3d 836, 859 (E.D. Mich. 2014) (efforts to conceal price fixing are prohibited); *accord In re Aftermarket Filters Antitrust Litig.*, No. 08 C 4883, 2009 WL 3754041 (N.D. Ill. Nov. 5, 2009); *In re Chocolate Confectionary Antitrust Litig.*, 602 F. Supp. 2d 538 (M.D. Pa. 2009).
Indirect Purchaser Standing for Consumer Law Claims	Ark. Code Ann. § 4-88-113(f) ("Any person who suffers actual damage or injury as a result of an offense or violation as defined in this chapter has a cause of action . . . ."); *State v. Infineon Techs. AG*, 531 F. Supp. 2d 1124, 1143-44 (N.D. Cal. 2007) ("plaintiffs' claim under the ADTPA, on behalf of indirect purchasers, is viable and may proceed"); *In re New Motor Vehicles Canadian Export Antitrust Litig.*, 350 F. Supp. 2d 160, 178-79 (D. Me. 2004) ("The ADTPA provides a private cause of action for damages for any person injured by a violation of the ADTPA, and is not limited to a cause of action for direct purchasers.").

California	
Antitrust Law	Cal. Bus. & Prof. Code § 16720(e)(2) and (3) (prohibits combinations to "[a]gree in any manner to keep the price of [a product] . . . at a fixed or graduated figure" or to "[e]stablish or settle the price of any [product] . . . so as directly or indirectly to preclude a free and unrestricted competition among themselves, or any purchasers or consumers in the sale or transportation of [the product]."); *Corwin v. L.A. Newspaper Serv. Bureau, Inc.*, 484 P.2d 953, 959 (Cal. 1971) (price-fixing is a business practice that is "conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have cause or the business excuse for their use").
Consumer Law	Cal. Bus. & Prof. Code § 17200 (prohibits "any unlawful, unfair or fraudulent business act or practice").
Indirect Purchaser Standing	Cal. Bus. & Prof. Code § 16750(a) ("This action may be brought by any person who is injured in his or her business or property by reason of anything forbidden or declared unlawful by this chapter, regardless of whether such injured person dealt directly or indirectly with the defendant.").
District of Columbia	
Antitrust Law	D.C. Code § 28-4502 (prohibits "[e]very contract, combination in the form of a trust or otherwise, or conspiracy in restraint of trade or commerce all or any part of which is within the District of Columbia").
Indirect Purchaser Standing	D.C. Code § 28-4509(a) (authorizes "any indirect purchaser in the chain of manufacture, production, or distribution of goods or services").
Florida	
Antitrust Law	Fla. Stat. § 542.18 (prohibits "[e]very contract, combination, or conspiracy in restraint of trade or commerce in this state").
Consumer Law	Fla. Stat. § 501.202 (prohibits "unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce").
Indirect Purchaser Standing for Consumer Law Claims	*Mack v. Bristol-Myers Squibb*, 673 So. 2d 100, 108 (Fla. 1st Dist. Ct. App. 1996) ("[W]e read subsections 501.202(2), 501.211(2) and 501.204(1) of the Florida DPTA as a clear statement of legislative policy to protect consumers through the authorization of such indirect purchaser actions.").

Iowa	
Antitrust Law	Iowa Code § 553.4 (prohibits "contract[s], combination[s], or conspiracy[ies] between two or more persons" if they "restrain or monopolize trade or commerce in a relevant market").
Indirect Purchaser Standing	*Comes v. Microsoft Corp.*, 646 N.W.2d 440, 445-45 (Iowa 2002) ("[T]he Iowa Competition Law creates a cause of action for all consumers, regardless of one's technical status as a direct or indirect purchaser.").
Kansas	
Antitrust Law	Kan. Stat. Ann. § 50-112 (prohibits "arrangements, contracts, agreements, trusts, or combinations between persons with a view or which tend to prevent full and free competition").
Indirect Purchaser Standing	Kan. Stat. Ann. § 50-161(b) ("Such action may be brought by any person who is injured in such person's business or property by reason of anything forbidden or declared unlawful by the Kansas restraint of trade act, regardless of whether such injured person dealt directly or indirectly with the defendant.").
Maine	
Antitrust Law	Me. Rev. Stat. Ann. tit. 10 § 1101 (prohibits "[e]very contract, combination in the form of trusts or otherwise, or conspiracy, in restraint of trade or commerce").
Indirect Purchaser Standing	Me. Rev. Stat. Ann. tit. 10 § 1104(1) ("Any person, including the State or any political subdivision of the State, injured directly or indirectly in its business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by section 1101, 1102 or 1102-A, may sue for the injury in a civil action.").
Massachusetts	
Antitrust Law	Mass. Gen. Laws ch. 93, § 4 (prohibits "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce in the commonwealth").
Consumer Law	Mass. Gen. Laws ch. 93A § 2 ("(a) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful. (b) It is the intent of the legislature that in construing paragraph (a) of this section in actions brought under sections four, nine and eleven, the courts will be guided by the interpretations given by the Federal Trade Commission and the Federal Courts to section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), as from time to time amended"); *Fed. Trade Comm'n v. Cement Inst.*, 333 U.S. 683, 694 (1948) ("all conduct violative of the Sherman Act may likewise come within the unfair trade practice prohibitions of the Trade Commission Act").
Indirect Purchaser Standing for Consumer Law Claims	Mass. Gen. Laws ch. 93A, § 9 ("Any person . . . who has been injured by another person's use or employment of any method, act or practice declared to be unlawful by section two . . . may bring an action . . . ."); *see also Ciardi v. F. Hoffmann-La Roche, Ltd.*, 436 Mass. 53, 62-63 (2002) (Massachusetts consumer statute permits indirect purchaser actions).

Michigan	
Antitrust Law	Mich. Comp. Laws § 445.772 (prohibits "[a] contract, combination, or conspiracy between 2 or more persons in restraint of, or to monopolize, trade or commerce in a relevant market").
Indirect Purchaser Standing	Mich. Comp. Laws § 445.778(2) ("any other person threatened with injury or injured directly or indirectly in his or her business or property" may bring suit).
Minnesota	
Antitrust Law	Minn. Stat. § 325D.51 (prohibits "[a] contract, combination, or conspiracy between two or more persons in unreasonable restraint of trade or commerce").
Indirect Purchaser Standing	Minn. Stat. § 325D.57 ("Any person, any governmental body, or the state of Minnesota or any of its subdivisions or agencies, injured directly or indirectly" may recover).
Mississippi	
Antitrust Law	Miss. Code Ann. § 75-21-1 (prohibits "[a] trust or combine is a combination, contract, understanding or agreement, expressed or implied, between two or more persons, corporations or firms or association of persons or between any one or more of either with one or more of the others, when inimical to public welfare and the effect of which would be: (a) To restrain trade; (b) To limit, increase or reduce the price of a commodity; (c) To limit, increase or reduce the production or output of a commodity . . .").
Indirect Purchaser Standing	Miss. Code Ann. § 75-21-9 (authorizes "[a]ny person . . . injured or damaged by a trust and combine . . ., or by its effects direct or indirect").
Nebraska	
Antitrust Law	Neb. Rev. Stat. § 59-801 (prohibits any "contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade of commerce").
Consumer Law	Neb. Rev. Stat. §§ 59-1602-1603 (prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce shall be unlawful. . . . Any contract, combination, in the form of trust or otherwise, or conspiracy in restraint of trade or commerce").
Indirect Purchaser Standing	Neb. Rev. Stat. § 59-821 (authorizing "[a]ny person who is injured in his or her business or property"); *Kanne v. Visa U.S.A Inc.*, 272 Neb. 489, 497-98 (2006) (2002 amendment to § 59-821 "removed the automatic bar against indirect purchaser actions announced in *Illinois Brick Co. v. Illinois* . . .").
Nevada	
Antitrust Law	Nev. Rev. Stat. Ann. § 598A.060(1) (prohibits any "contract, combination or conspiracy in restraint of trade").
Indirect Purchaser Standing	Nev. Rev. Stat. Ann. § 598A.210(2) (confers standing on "[a]ny person injured or damaged directly or indirectly in his or her business or property").

New Hampshire	
Antitrust Law	N.H. Rev. Stat. Ann. § 356:2 (prohibits "[e]very contract, combination, or conspiracy in restraint of trade").
Indirect Purchaser Standing	N.H. Rev. Stat. Ann. § 356:11(II) (authorizing recovery of damages "regardless of whether that person dealt directly or indirectly with the defendant").
New Mexico	
Antitrust Law	N.M. Stat. Ann. § 57-1-1 (prohibits "[e]very contract, agreement, combination or conspiracy in restraint of trade or commerce, any part of which trade or commerce is within this state").
Indirect Purchaser Standing	N.M. Stat. Ann. § 57-1-3(A) (confers standing to "any person threatened with injury or injured in his business or property, directly or indirectly").
New York	
Antitrust Law	N.Y. Gen. Bus. Law § 340(1) (prohibits "[e]very contract, agreement, arrangement or combination whereby . . . [c]ompetition or the free exercise of any activity in the conduct of any business, trade or commerce or in the furnishing of any service in this state is or may be restrained").
Consumer Law	N.Y. Gen. Bus. Law § 349(a) (prohibits "[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state").
Indirect Purchaser Standing	N.Y. Gen. Bus. Law §340(6) ("the fact that . . . any person who has sustained damages by reason of violation of this section has not dealt directly with the defendant shall not bar or otherwise limit recover").
North Carolina	
Antitrust Law	N.C. Gen. Stat. § 75-1 (prohibits any "conspiracy in restraint of trade or commerce").
Indirect Purchaser Standing	N.C. Gen. Stat. § 75-16 ("If any person shall be injured or the business of any person, firm or corporation shall be broken up, destroyed or injured by reason of any act or thing done by any other person, firm or corporation in violation of the provisions of this Chapter, such person, firm or corporation so injured shall have a right of action . . . ."); *Hyde v. Abbott Labs, Inc*., 123 N.C. App. 572, 584 (1996) ("indirect purchasers have standing" to sue for antitrust violations).
North Dakota	
Antitrust Law	N.D. Cent. Code § 51-08.1-02 (prohibits "[a] contract, combination, or conspiracy between two or more persons in restraint of, or to monopolize, trade or commerce in a relevant market").
Indirect Purchaser Standing	N.D. Cent. Code § 51-08.1-08(3) ("the fact that the . . . person threatened with injury or injured in its business or property by any violation of the provisions of this chapter has not dealt directly with the defendant does not bar recovery").

Oregon	
Antitrust Law	Ore. Rev. Stat. § 646.725 (prohibits "[e]very contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce").
Indirect Purchaser Standing	Ore. Rev. Stat § 646.780 ("An action authorized by this paragraph may be brought regardless of whether the plaintiff dealt directly or indirectly with the adverse party.")
Rhode Island	
Antitrust Law	R.I. General Laws § 6-36-4 (prohibits "[e]very contract, combination, or conspiracy in restrain of, or to monopolize, trade or commerce is unlawful.")
Indirect Purchaser Standing	R.I. General Laws § 6-11.2-10 ("Any person who has been damaged or injured by failure of a person required to be licensed under this chapter, to comply with the provisions of this chapter, may recover the actual value of the property involved in the transaction.
South Carolina	
Antitrust Law	S.C Code of Laws Ann. § 39-5-20 (prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.")
Indirect Purchaser Standing	S.C. Code of Laws Ann. §39-5-140 ("Any person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by § **39-5-20** may bring an action individually. . .")
South Dakota	
Antitrust Law	S.D. Codified Laws § 37-1-3.1 (prohibits "[a] contract, combination, or conspiracy between two or more persons in restraint of trade or commerce any part of which is within this state").
Indirect Purchaser Standing	S.D. Codified Laws § 37-1-33 ("No provision of this statute may deny any person who is injured directly or indirectly in his business or property by violation of this chapter the right to sue for and obtain any relief afforded . . . .").
Tennessee	
Antitrust Law	Tenn. Code Ann. § 47-25-101 (prohibits "[a]ll arrangements, contracts, agreements, trusts or combinations between persons or corporations . . . designed, or which tend, to advance, reduce, or control the price or the cost to the producer or the consumer of any such product or article").
Indirect Purchaser Standing	Tenn. Code Ann. § 47-25-106 (confers standing on "[a]ny person who is injured or damaged by any such arrangement, contract, agreement, trust, or combination"); *Freeman Indus. v. Eastman Chem. Co.*, 172 S.W.3d 512, 517-18 (Tenn. 2005) ("the plain language . . . provides a cause of action to indirect purchasers").

Utah	
Antitrust Law	Utah Code Ann. § 76-10-3104 (prohibits "[e]very contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce").
Indirect Purchaser Standing	Utah Code Ann. § 76-10-3109(1)(a) ("A person who is a citizen of this state or a resident of this state and who is injured or is threatened with injury in his business or property by a violation of the Utah Antitrust Act may bring an action for injunctive relief and damages, regardless of whether the person dealt directly or indirectly with the defendant").
Vermont	
Consumer Law	Vermont Stat. Ann. tit. 9, § 2453(a) (prohibits "[u]nfair methods of competition in commerce and unfair or deceptive acts or practices in commerce").
Indirect Purchaser Standing for Consumer Law Claims	Vermont Stat. Ann. tit. 9, § 2461(b) (authorizing suites by "[a]ny consumer who contracts for goods or services in reliance upon false or fraudulent representations or practices prohibited by section 2453"); *Elkins v. Microsoft Corp*., 174 Vt. 328, 337-38, 341 (2002) (indirect purchasers may sue under § 2465(b)).
West Virginia	
Antitrust Law	W. Va. Code § 47-18-3(a) (prohibits "[e]very contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce in this State").
Indirect Purchaser Standing	W. Va. Code § 47-18-20 (attorney general may "make and adopt such rules and regulations as may be necessary for the enforcement and administration of [the Act]"); W. Va. Code R. § 142-9-2.1 ("[a]ny person who is injured directly or indirectly by reason of a violation of the West Virginia Antitrust Act" may "bring an action for damages under W. Va. Code § 47-18-9").
Wisconsin	
Antitrust Law	Wis. Stat. Ann. § 133.03(1) (prohibits "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce").
Indirect Purchaser Standing	Wis. Stat. Ann. § 133.18(1) (2006) (conferring standing on "any person injured, directly or indirectly").